# 2021

# CUMULATIVE SUPPLEMENT

TO

# MISSISSIPPI CODE

## 1972 ANNOTATED

**Issued September 2021**

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
ENACTED THROUGH THE 2021 REGULAR SESSION

PUBLISHED BY AUTHORITY OF
THE LEGISLATURE

SUPPLEMENTING

# Volume 19

Title 83 (Chapters 1 to 20)

**(As Revised 2011)**

For latest statutes or assistance call 1-800-833-9844

By the Editorial Staff of the Publisher

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# User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

# PUBLISHER'S FOREWORD

**Statutes**

The 2021 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2021 Regular Legislative Session.

**Annotations**

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 4th Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

**Amendment Notes**

Amendment notes detail how the new legislation affects existing sections.

**Editor's Notes**

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

**Joint Legislative Committee Notes**

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

**Tables**

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2021 Regular Session.

**Index**

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

**Acknowledgements**

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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September 2021 LexisNexis

# SCHEDULE OF NEW SECTIONS

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agents of limited license rental car company may receive commission under rental car company's limited license.

# MISSISSIPPI CODE
# 1972
# ANNOTATED

## VOLUME NINETEEN

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## TITLE 83.

## INSURANCE



## CHAPTER 1.

## DEPARTMENT OF INSURANCE



## GENERAL PROVISIONS



### § 83-1-5. Compensation and employees.

The commissioner shall receive a compensation to be fixed by law. He is hereby authorized to employ a clerk and stenographer and an actuary at a

salary to be fixed by law; and in addition shall be allowed a sufficient sum for traveling expenses and for extra clerical help. To assist the commissioner in efficiently performing the official duties imposed upon him by law, he may employ suitable and competent persons who possess the professional skill and/or expert knowledge needed to fulfill these duties. The State Personnel Board, based upon its findings of fact, shall exempt these persons from the provisions of Section 25-3-39 when the acquisition of such professional services is precluded based on the prevailing wage in the relevant labor market, provided such compensation shall not, directly or indirectly, be in excess of the salary authorized to be paid to the deputy commissioner.

**HISTORY: Codes, 1906, § 2553; Hemingway's 1917, § 5017; 1930, § 5116; 1942, § 5618; Laws, 1926, ch. 345; reenacted without change, Laws, 1982, ch. 375, § 2; reenacted without change, Laws, 1990, ch. 559, § 3; reenacted without change, Laws, 1996, ch. 313, § 3; Laws, 2012, ch. 546, § 42; Laws, 2014, ch. 396, § 1, eff from and after passage (approved Mar. 17, 2014).**

**Amendment Notes —** The 2012 amendment added the last paragraph.

The 2014 amendment added the last two sentences in the first paragraph and deleted the last paragraph, which read "Further, the commissioner may appoint or employ special counsel pursuant to the provisions of Section 7-5-39."

## § 83-1-27. Examination of foreign concerns; funding of agency expenses; deposit of monies into State General Fund.

Whenever the Commissioner of Insurance deems it prudent for the protection of the policyholders in this state, he shall in like manner visit and examine, or cause to be visited and examined by some competent person or persons he may appoint for that purpose, any foreign insurance company applying for admission or already admitted to do business by agencies in this state, and such companies shall pay the proper charges incurred in such examination, including the expense of the commissioner or his deputy and the expenses and compensation of his assistants employed therein. For the purpose aforesaid, the commissioner or his deputy or persons making examination shall have free access to all the books and papers of the insurance company that relate to its business and to the books and papers kept by any of its agents, and may summon and qualify as witnesses, under oath, and examine the directors, officers, agents and trustees of any such company, and any other persons in relation to its affairs, transactions and conditions. Such examination shall be made by the commissioner, or by his accredited representatives, and such companies shall pay the proper charges incurred in such examination, including the expense of the commissioner or financial examiners, actuaries, market conduct examiners, accountants, attorneys or other professional service organizations necessary to administer this section. The Department of Insurance may contract with professional service organizations to examine all companies under its jurisdiction, and the professional service organization may directly bill the company under examination. The commissioner shall monitor the charges for these professional services and verify that

all costs are reasonable. If a company fails to pay these fees within thirty (30) days of billing, the commissioner, after notice and a hearing, is authorized to impose an administrative fine not to exceed One Thousand Dollars ($1,000.00) per day to be deposited into the special fund in the State Treasury designated as the "Insurance Department Fund." The compensation and expense of the commissioner or such examiner for the commissioner shall not exceed that approved by the National Association of Insurance Commissioners for all financial and market conduct examiners on such examinations, itemized account of such charges being rendered to and approved by the Commissioner of Insurance.

The results of audits performed hereunder by the Commissioner of Insurance may be furnished to the State Tax Commission. Nothing herein shall be construed to prohibit the State Tax Commission from performing such additional audits or verifications as it may deem necessary to insure the proper payment of taxes.

From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

**HISTORY: Codes, 1906, § 2566; Hemingway's 1917, § 5031; 1930, § 5127; 1942, § 5629; Laws, 1958, ch. 433; Laws, 1972, ch. 324, § 1; Laws, 1982, ch. 351, § 12, reenacted, Laws, ch. 366, § 12; Laws, 1984, ch. 462, § 5; reenacted, Laws, 1990, ch. 559, § 15; reenacted without change, Laws, 1996, ch. 313, § 14; Laws, 1997, ch. 410, § 1; Laws, 2016, ch. 459, § 18, eff from and after July 1, 2016.**

**Editor's Notes —** Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides: "SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

**Amendment Notes —** The 2016 amendment added the last two paragraphs.

**Cross References —** Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agency by appropriation of Legislature from General Fund, see § 27-104-205.

## § 83-1-29. Suspension or revocation of certificate of authority.

### JUDICIAL DECISIONS

**1. In general.**

When a contractor sued insurers and their agent for negligently issuing a bid bond without authority, due to expiration of the agent's certificate for failure to pay a renewal fee, summary judgment erred because the agent was unauthorized to issue the bond, which had to be valid on the date issued but was null and void, and a later payment of the fee and reinstatement of the agent did not retroactively validate the bond, so fact questions existed as to the negligent issuance of the bond contrary to a duty to the contractor. King Metal Bldgs., Inc. v. Renasant Ins., Inc., 159 So. 3d 567, 2014 Miss. App.

LEXIS 377 (Miss. Ct. App. 2014), cert. denied, 158 So. 3d 1153, 2015 Miss. LEXIS 142 (Miss. 2015).

## § 83-1-35. Reward in case of willful destruction by fire or explosion of real or personal property within state.

The Commissioner of Insurance is hereby authorized, in his discretion, to offer a reward not to exceed Five Thousand Dollars ($5,000.00) for information leading to the apprehension, indictment and conviction of any person, persons or organization of persons responsible for the willful destruction by fire or explosion of any real or personal property located within this state.

The Commissioner of Insurance is further directed to have suitable reward notices printed and posted in conspicuous places, and to utilize such other news media or informational materials as necessary to encourage those with information to come forward.

The reward monies paid, if any, as well as the cost of printing and distribution of reward notices and other news media or informational materials, shall be paid from premium taxes under Sections 27-15-103 and 27-15-109. However, the Commissioner of Insurance shall keep a separate account of all monies disbursed under the provisions of this section and shall include the same in his annual report.

**HISTORY: Codes, 1942, § 5630.5; Laws, 1958, ch. 447, §§ 1-3; Laws, 1979, ch. 316; Laws, 1982, ch. 351, § 14; reenacted, Laws, 1982, ch. 366, § 16; reenacted, Laws, 1990, ch. 559, § 19; reenacted without change, Laws, 1996, ch. 313, § 18; Laws, 2013, ch. 324, § 1, eff from and after July 1, 2013.**

**Amendment Notes** — The 2013 amendment substituted "Five Thousand Dollars ($5,000.00)" for "One Thousand Dollars ($1,000.00)" in the first paragraph.

## § 83-1-39. County volunteer fire department fund; fund for insurance rebate monies not expended for fire protection purposes.

**Cross References** — Authorization of county appropriations to volunteer fire departments meeting requirements of subsection (6) of this section, see § 19-5-95.

## § 83-1-49. Power of commissioner to enjoin unlicensed activity.

(1) The Commissioner of Insurance shall have the power to examine and investigate into the affairs of every person, company, corporation or association engaged in the business of insurance in this state in order to determine whether such person, company, corporation or association has been or is engaged in any insurance activity without having first obtained a license as required by law.

(2) Whenever the commissioner shall have reason to believe, from evidence satisfactory to him, that any such person, company, corporation or association has engaged or is engaging in any unlicensed insurance activity in

this state, the commissioner may issue a cease and desist order with or without notice and a prior hearing against the person, company, corporation or association engaged in the prohibited unlicensed activities, directing them to cease and desist from further unlicensed activities. If a cease and desist order is issued without notice and a hearing, the order shall specify that the respondent may request a hearing for reconsideration within twenty (20) days of the date of the order.

(3) Should any person, company, corporation or association fail or refuse to comply with the cease and desist order issued by the commissioner pursuant to subsection (2) of this section, such violation shall be a misdemeanor and, upon conviction, shall be punishable by a fine of not more than Five Thousand Dollars ($5,000.00) per violation.

**HISTORY: Laws, 2015, ch. 422, § 1, eff from and after passage (approved Mar. 29, 2015).**

**Cross References —** Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

## § 83-1-51. Power of commissioner to enjoin unauthorized activity in violation of any insurance law.

(1) The Commissioner of Insurance shall have the power to examine and investigate into the affairs of every person, company, corporation or association who holds a license to conduct the business of insurance in this state in order to determine whether such person, company, corporation or association has been or is engaged in any improper or unauthorized activity in violation of any insurance law.

(2) Whenever the commissioner shall have reason to believe, from evidence satisfactory to him, that any such person, company, corporation or association has engaged or is engaging in any improper or unauthorized activity in violation of any insurance law, the commissioner may issue a cease and desist order with or without notice and a prior hearing against the person, company, corporation or association engaged in the prohibited activities, directing them to cease and desist from further activities. If a cease and desist order is issued without notice and a hearing, the order shall specify that the respondent may request a hearing for reconsideration within twenty (20) days of the date of the order.

(3) Should any person, company, corporation or association fail or refuse to comply with the cease and desist order issued by the commissioner pursuant to subsection (2) of this section, such violation shall be a misdemeanor and, upon conviction, shall be punishable by a fine of not more than Five Thousand Dollars ($5,000.00) per violation.

**HISTORY: Laws, 2016, ch. 305, § 1, eff from and after July 1, 2016.**

**Cross References —** Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

## JURISDICTION OVER HEALTH CARE PROVIDERS

Sec.
83-1-101. Jurisdiction of Insurance Department; exception.

### § 83-1-101. Jurisdiction of Insurance Department; exception.

Notwithstanding any other provision of law to the contrary, and except as provided herein, any person or other entity which provides coverage in this state for medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether such coverage is by direct payment, reimbursement, or otherwise, shall be presumed to be subject to the jurisdiction of the State Insurance Department, unless (a) the person or other entity shows that while providing such services it is subject to the jurisdiction of another agency of this state, any subdivisions thereof, or the federal government; or (b) the person or other entity is providing coverage under the Direct Primary Care Act in Sections 83-81-1 through 83-81-11.

**HISTORY: Laws, 1989, ch. 351, § 1; Laws, 2015, ch. 369, § 7, eff from and after July 1, 2015.**

**Amendment Notes —** The 2015 amendment substituted "State Insurance Department" for "State Department of Insurance"; inserted "(a)"; and added (b).

## COMPREHENSIVE HURRICANE DAMAGE MITIGATION PROGRAM

Sec.
83-1-191. Comprehensive hurricane damage mitigation program established; cost-benefit study on wind hazard mitigation construction measures; inspections; financial grants for residential retrofits; public education; advisory council; rules and regulations [Repealed effective July 1, 2025].

### § 83-1-191. Comprehensive hurricane damage mitigation program established; cost-benefit study on wind hazard mitigation construction measures; inspections; financial grants for residential retrofits; public education; advisory council; rules and regulations [Repealed effective July 1, 2025].

(1) There is established within the Department of Insurance a Comprehensive Hurricane Damage Mitigation Program. This section does not create an entitlement for property owners or obligate the state in any way to fund the inspection or retrofitting of residential property or commercial property in this state. Implementation of this program is subject to the availability of funds that may be appropriated by the Legislature for this purpose. The program may develop and implement a comprehensive and coordinated approach for hurricane damage mitigation that may include the following:

(a) **Cost-benefit study on wind hazard mitigation construction measures.** The performance of a cost-benefit study to establish the most appropriate wind hazard mitigation construction measures for both new construction and the retrofitting of existing construction for both residential and commercial facilities within the wind-borne debris regions of Mississippi as defined by the International Building Code. The recommended wind construction techniques shall be based on both the newly adopted Mississippi building code sections for wind load design and the wind-borne debris region. The list of construction measures to be considered for evaluation in the cost-benefit study shall be based on scientifically established and sound, but common, construction techniques that go above and beyond the basic recommendations in the adopted building codes. This allows residents to utilize multiple options that will further reduce risk and loss and still be awarded for their endeavors with appropriate wind insurance discounts. It is recommended that existing accepted scientific studies that validate the wind hazard construction techniques benefits and effects be taken into consideration when establishing the list of construction techniques that homeowners and business owners can employ. This will ensure that only established construction measures that have been studied and modeled as successful mitigation measures will be considered to reduce the chance of including risky or unsound data that will cost both the property owner and state unnecessary losses. The cost-benefit study shall be based on actual construction cost data collected for several types of residential construction and commercial construction materials, building techniques and designs that are common to the region. The study shall provide as much information as possible that will enhance the data and options provided to the public, so that homeowners and business owners can make informed and educated decisions as to their level of involvement. Based on the construction data, modeling shall be performed on a variety of residential and commercial designs, so that a broad enough representative spectrum of data can be obtained. The data from the study will be utilized in a report to establish tables reflecting actuarially appropriate levels of wind insurance discounts (in percentages) for each mitigation construction technique/combination of techniques. This report will be utilized as a guide for the Department of Insurance and the insurance industry for developing actuarially appropriate discounts, credits or other rate differentials, or appropriate reductions in deductibles, for properties on which fixtures or construction techniques demonstrated to reduce the amount of loss in a windstorm have been installed or implemented. Additional data that will enhance the program, such as studies to reflect property value increases for retrofitting or building to the established wind hazard mitigation construction techniques and cost comparison data collected to establish the value of this program against the investment required to include the mitigation measures, also may be provided.

(b) **Wind certification and hurricane mitigation inspections.**

(i) Home-retrofit inspections of site-built, residential property, including single-family, two-family, three-family or four-family residential units,

and a set of representative commercial facilities may be offered to determine what mitigation measures are needed and what improvements to existing residential properties are needed to reduce the property's vulnerability to hurricane damage. A state program may be established within the Department of Insurance to provide homeowners and business owners wind certification and hurricane mitigation inspections. The inspections provided to homeowners and business owners, at a minimum, must include:

1. A home inspection and report that summarizes the results and identifies corrective actions a homeowner may take to mitigate hurricane damage.

2. A range of cost estimates regarding the mitigation features.

3. Insurer-specific information regarding premium discounts correlated to recommended mitigation features identified by the inspection.

4. A hurricane resistance rating scale specifying the home's current as well as projected wind resistance capabilities.

This data may be provided by trained and certified inspectors in standardized reporting formats and forms to ensure all data collected during inspections is equivalent in style and content that allows construction data, estimates and discount information to be easily assimilated into a database. Data pertaining to the number of inspections and inspection reports may be stored in a state database for evaluation of the program's success and review of state goals in reducing wind hazard loss in the state.

(ii) To qualify for selection by the department as a provider of wind certification and hurricane mitigation inspections services, the entity shall, at a minimum, and on a form and in the manner prescribed by the commissioner:

1. Use wind certification and hurricane mitigation inspectors who:

a. Have prior experience in residential and/or commercial construction or inspection and have received specialized training in hurricane mitigation procedures through the state certified program. In order to qualify for training in the inspection process, the individual should be either a licensed building code official, a licensed contractor or inspector in the State of Mississippi, or a civil engineer.

b. Have undergone drug testing and background checks.

c. Have been certified through a state mandated training program, in a manner satisfactory to the department, to conduct the inspections.

d. Have not been convicted of a felony crime of violence or of a sexual offense; have not received a first-time offender pardon or nonadjudication order for a felony crime of violence or of a sexual offense; or have not entered a plea of guilty or nolo contendere to a felony charge of violence or of a sexual offense.

e. Submit a statement authorizing the Commissioner of Insurance to order fingerprint analysis or any other analysis or documents deemed necessary by the commissioner for the purpose of verifying

the criminal history of the individual. The commissioner shall have the authority to conduct criminal history verification on a local, state or national level, and shall have the authority to require the individual to pay for the costs of such criminal history verification.

2. Provide a quality assurance program including a reinspection component.

3. Have data collection equipment and computer systems, so that data can be submitted electronically to the state's database of inspection reports, insurance certificates, and other industry information related to this program. It is mandatory that all inspectors provide original copies to the property owner of any inspection reports, estimates, etc., pertaining to the inspection and keep a copy of all inspection materials on hand for state audits.

(c) **Financial grants to retrofit properties.** Financial grants may be used to encourage single-family, site-built, owner-occupied, residential property owners or commercial property owners to retrofit their properties to make them less vulnerable to hurricane damage.

(d) **Education and consumer awareness.** Multimedia public education, awareness and advertising efforts designed to specifically address mitigation techniques may be employed, as well as a component to support ongoing consumer resources and referral services. In addition, all insurance companies shall provide notification to their clients regarding the availability of this program, participation details, and directions to the state website promoting the program, along with appropriate contact phone numbers to the state agency administrating the program. The notification to the clients must be sent by the insurance company within thirty (30) days after filing their insurance discount schedules with the Department of Insurance.

(e) **Advisory council.** There is created an advisory council to provide advice and assistance to the program administrator with regard to his or her administration of the program. The advisory council shall consist of:

(i) An agent, selected by the Independent Insurance Agents of Mississippi.

(ii) Two (2) representatives of residential property insurers, selected by the Department of Insurance.

(iii) One (1) representative of homebuilders, selected by the Home Builders Association of Mississippi.

(iv) The Chairman of the House Insurance Committee, or his designee.

(v) The Chairman of the Senate Insurance Committee, or his designee.

(vi) The Executive Director of the Mississippi Windstorm Underwriting Association, or his designee.

(vii) The Director of the Mississippi Emergency Management Agency, or his designee.

Members appointed under subparagraphs (i) and (ii) shall serve at the pleasure of the Department of Insurance. All other members shall serve as

voting ex officio members. Members of the advisory council who are not legislators, state officials or state employees shall be compensated at the per diem rate authorized by Section 25-3-69, and shall be reimbursed in accordance with Section 25-3-41, for mileage and actual expenses incurred in the performance of their duties. Legislative members of the advisory council shall be paid from the contingent expense funds of their respective houses in the same manner as provided for committee meetings when the Legislature is not in session; however, no per diem or expense for attending meetings of the advisory council may be paid while the Legislature is in session. No advisory council member may incur per diem, travel or other expenses unless previously authorized by vote, at a meeting of the council, which action shall be recorded in the official minutes of the meeting. Nonlegislative members shall be paid from any funds made available to the advisory council for that purpose.

(f) **Rules and regulations.** The Department of Insurance may adopt rules and regulations governing the Comprehensive Hurricane Damage Mitigation Program. The department also may adopt rules and regulations establishing priorities for grants provided under this section based on objective criteria that gives priority to reducing the state's probable maximum loss from hurricanes. However, pursuant to this overall goal, the department may further establish priorities based on the insured value of the dwelling, whether or not the dwelling is insured by the Mississippi Windstorm Underwriting Association and whether or not the area under consideration has sufficient resources and the ability to perform the retrofitting required.

(2) Nothing in this section shall prohibit the Department of Insurance from entering into an agreement with any other appropriate state agency to assist with or perform any of the duties set forth hereunder.

(3) This section shall stand repealed from and after July 1, 2025.

**HISTORY: Laws, 2007, ch. 524, § 4; Laws, 2009, ch. 537, § 1; Laws, 2010, ch. 313, § 1; Laws, 2012, ch. 307, § 1; Laws, 2015, ch. 319, § 1, eff from and after July 1, 2015; Laws, 2018, ch. 398, § 1, eff from and after July 1, 2018; reenacted and amended, Laws, 2021, ch. 363, § 1, eff from and after July 1, 2021.**

**Amendment Notes —** The 2012 amendment extended the repealer provision in (3), from "July 1, 2012" to "July 1, 2015."

The 2015 amendment extended the repealer provision in (3) from "July 1, 2015" to "July 1, 2018."

The 2018 amendment extended the date of the repealer for the section by substituting "July 1, 2021" for "July 1, 2018" in (3).

The 2021 amendment reenacted and amended the section by substituting "July 1, 2025" for "July 1, 2021" in (3) to extend the date of the repealer for the section.

**Cross References —** State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information, see § 25-1-117.

# CHAPTER 2.

# COMPETITIVE RATING FOR PROPERTY AND CASUALTY INSURANCE

Sec.



## § 83-2-3. Standards applicable to rates; criteria for determining compliance; commissioner to establish uniform policy language regarding applicability of hurricane deductibles and form of notice under certain homeowner's insurance policies.

(1) Rates shall comply with the following standards:

(a) Rates shall not be excessive, inadequate or unfairly discriminatory.

(b) A rate is excessive if it is likely to produce a profit that is unreasonably high for the insurance provided or if the expense provision included therein is unreasonably high in relation to the services rendered.

(c) A rate is inadequate if it threatens the solvency of the insurance company or tends to create a monopoly.

(d) Unfair discrimination exists if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses. A rate is not unfairly discriminatory because different premiums result for policyholders with like loss exposures with different expenses, or like expenses but different loss exposures, so long as the rate reflects the differences with reasonable accuracy.

(2) In determining whether rates comply with the standards set forth in subsection (1), the following criteria shall apply:

(a) Due consideration shall be given to past and prospective loss and expense experience within and outside this state; to catastrophe hazards; to any residual market loss redistributions and other similar obligations; to a reasonable provision for profit and contingencies; to trends within and outside this state; to loadings for leveling premium rates over a reasonable period of time or for dividends or savings to be allowed or returned by insurers to their policyholders, members or subscribers; and to all other relevant factors, including the judgment of the filer.

(b) Risks may be classified in any reasonable way for the establishment of rates except that no risks may be grouped by classifications based, in whole or in part, on race, color, creed, or national origin of the risk. Rates may be modified for individual risks in accordance with rating plans or schedules which provide for recognition of probable variations in hazards, expenses or both.

(c) The systems of expense provisions included in rates for use by an insurer or group of insurers may differ from those of other insurers or group of insurers to reflect the operating methods of such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof.

(d) Any homeowners' insurance policy filed with the Commissioner of Insurance that offers a percentage deductible for the peril of windstorm from a named storm shall offer a buy-back provision for that deductible which is actuarially sound; however, the Commissioner of Insurance may grant a waiver from the mandatory buy-back provision in accordance with the following procedure and criteria:

(i) An insurance company shall make a formal filing requesting a waiver from the buy-back provision requirement with the Commissioner of Insurance.

(ii) An insurance company shall submit written proof in its formal filing as to why it is in the best interest of Mississippi policyholders to receive a waiver from the buy-back provision requirement and shall provide any supporting documentation requested by the commissioner deemed appropriate to make his decision.

(iii) All expenses incurred by the Commissioner of Insurance or his designee in determining the validity of the waiver request shall be borne by the petitioning insurer. Such expenses may include, but not be limited to, the cost of reviewing the filing by actuaries, and if the commissioner deems a public hearing appropriate, the cost of a facility, the cost of publicity and the cost of a court reporter for the hearing.

(e) The commissioner shall establish by regulation uniform policy language regarding the applicability of hurricane deductibles and the form of notice to be provided to an insured under a homeowner's insurance policy by an insurer utilizing a hurricane deductible program or programs. The term "hurricane," for the purpose of a hurricane deductible program, means a storm system that has been declared to be a hurricane by the National Hurricane Center of the National Weather Service. The duration of the hurricane includes the time period, in Mississippi:

(i) Beginning at the time a hurricane watch or hurricane warning is issued for any part of Mississippi by the National Hurricane Center of the National Weather Service;

(ii) Continuing for the time period during which the hurricane conditions exist anywhere in Mississippi; and

(iii) Ending twenty-four (24) hours following the termination of the last hurricane watch or hurricane warning issued for any part of Mississippi by the National Hurricane Center of the National Weather Service.

(3) To ensure the most appropriate use of state resources with respect to the engagement of actuarial services for the review of rate filings under this chapter, the commissioner may adopt rules and regulations to establish the criteria and procedures for determining when a rate filing should be submitted to an actuary for review.

**HISTORY: Laws, 1987, ch. 422, § 3; Laws, 1999, ch. 468, § 1; Laws, 2014, ch. 380, § 1, eff from and after July 1, 2014; Laws, 2020, ch. 447, § 2, eff from and after July 1, 2020.**

**Amendment Notes —** The 2014 amendment added (2)(e) and made minor punctuation changes.

The 2020 amendment added (3).

**JUDICIAL DECISIONS**

**1. Private cause of action.**

Miss. Code Ann. § 83-2-3 was regulatory in nature and afforded no private right of action; the Mississippi Commissioner of Insurance was charged with enforcement of § 83-2-3. Miss. Code Ann. § 83-2-29(1). The defendant correctly stated that the plaintiff confessed the excessive rate standards claim, and the parties agreed that no private cause of action existed under Miss. Code Ann. § 83-2-3; therefore, the court granted summary judgment in favor of the defendant as to the plaintiff's excessive rate standards claim. Mullen v. Nationwide Mut. Ins. Co., 2013 U.S. Dist. LEXIS 7679 (S.D. Miss. Jan. 18, 2013).

## § 83-2-7. Filing of rates and related information by insurers; exceptions; effective date of rate adjustment filing; exemption of certain commercial lines insurance coverages from filing and approval requirements.

(1) Except as provided in Section 83-2-9 and subsections (2), (3) and (5) of this section, every insurer shall file with the commissioner all rates, supplementary rate information, policy forms and endorsements at least thirty (30) days prior to the proposed effective date which shall be stated in the filing. Rates, supplementary rate information, policy forms and endorsements need not be filed for inland marine risks which by general custom of the business are not written according to manual rules or rating plans. Upon the request of the commissioner, supporting information shall also be filed. Any filing made under this section is deemed to be approved unless disapproved by the Commissioner of Insurance within thirty (30) days after the date of filing.

(2) A filing of adjustments of rates for existing rating systems made under this section which does not involve a change in the relationship between such rates and the expense portion thereof or does not involve a change of the element of expenses which are paid as a percentage of premiums and does not involve a change in rate relativities among such classifications on any basis other than loss experience is effective on the date specified in the filing which shall not be less than thirty (30) days after the filing is made and shall be deemed to meet the requirements of this chapter.

(3) The commissioner may give written notice within thirty (30) days of

the receipt of the filing that additional time, not to exceed sixty (60) days from the date of such notice, is necessary to consider the filing. A filing is deemed to meet the requirements of this chapter and becomes effective unless disapproved by the commissioner before the expiration of the waiting period or an extension thereof. Whenever a filing made under this section is not accompanied by sufficient supporting information, the commissioner shall inform the filing entity as to what information is required to complete the filing. The filing shall not be deemed to be completed until such information is furnished.

(4) No insurance company shall make or issue a contract or policy except in accordance with filings made with the commissioner, if such filings are required.

(5) Subject to the provisions of subsections (6), (7) and (8) of this section, rates and supplementary rate information for the following commercial lines insurance coverages shall be exempt from filing and approval requirements. However, the rates shall remain subject to the standards set forth in Section 83-2-3. Policy forms and endorsements for the following commercial lines insurance coverages must be filed with the commissioner within sixty (60) days of use for informational purposes only:

(a) Surety and Fidelity;

(b) Boiler and Machinery;

(c) Environmental Impairment or Pollution Liability;

(d) Kidnap and Ransom;

(e) Political Risk or Expropriation;

(f) Excess and Umbrella Liability;

(g) Employment Practices Liability;

(h) Media Liability;

(i) Product Liability, Product Recall, and Completed Operations;

(j) Highly Protected Commercial Property; and

(k) Any other commercial lines insurance coverage or risk that the commissioner shall, pursuant to regulation, exempt from rate, rate supplementary information, or policy form filing requirements in order to promote enhanced competition or to more effectively use the resources of the department that might otherwise be used to review commercial lines filings.

(6) If a commercial lines insurance rate, policy form or endorsement is determined not to comply with the requirements of Mississippi law, the commissioner may issue an order specifying in detail how the rate, policy form, or endorsement fails to meet statutory requirements and further specifying a prospective date after which the rate or form may not be used. The commissioner's findings shall not affect policies in force prior to the date specified in the order. As part of such an order, the commissioner may require the insurer subject to the order to submit a filing for approval by the commissioner of a new rate or policy form, if any, that will replace the discontinued rate or policy form.

(7) The commissioner may temporarily reinstate, for a period of no longer than one (1) year, the filing and approval requirements for rate, rate supplementary information, or policy form for a specific type of commercial lines insurance if, after a hearing, the commissioner makes a finding of fact that a

reasonable degree of competition does not exist for that specific type of insurance coverage. Such a finding of fact by the commissioner must specify the relevant tests used to determine whether a lack of a reasonable degree of competition exists and the results thereof. In the absence of such specific findings of fact by the commissioner, it shall be presumed that a competitive market exists.

(8) For purposes of this section, commercial lines insurance means property and casualty insurance for any risk that is not a personal or family risk, but shall not include workers' compensation, medical malpractice liability, creditor-placed insurance or any insurance issued by residual market mechanisms or assigned risk plans.

**HISTORY: Laws, 1987, ch. 422, § 5; Laws, 2010, ch. 311, § 1, eff from and after July 1, 2010; Laws, 2020, ch. 447, § 1, eff from and after July 1, 2020.**

**Amendment Notes —** The 2020 amendment, in (1), substituted "subsections (2), (3) and (5)" for "subsections (2) and (3)"; and added (5) through (8).

## § 83-2-29. Penalties; procedures for license suspension.

### JUDICIAL DECISIONS

**1. Enforcement.**

Miss. Code Ann. § 83-2-3 was regulatory in nature and afforded no private right of action; the Mississippi Commissioner of Insurance was charged with enforcement of § 83-2-3. Miss. Code Ann. § 83-2-29(1). The defendant correctly stated that the plaintiff confessed the excessive rate standards claim, and the parties agreed that no private cause of action existed under Miss. Code Ann. § 83-2-3; therefore, the court granted summary judgment in favor of the defendant as to the plaintiff's excessive rate standards claim. Mullen v. Nationwide Mut. Ins. Co., 2013 U.S. Dist. LEXIS 7679 (S.D. Miss. Jan. 18, 2013).

## § 83-2-33. Property and casualty insurance companies to contribute to Insurance Department Fund; funding of agency expenses; deposit of monies into State General Fund.

All property and casualty insurance companies doing business in this state shall contribute annually, at such times as the Insurance Commissioner shall determine, in proportion to their gross premiums collected within the State of Mississippi during the preceding year, to a special fund in the State Treasury to be known as the "Insurance Department Fund" to be expended by the Insurance Commissioner in the payment of the expenses of the Department of Insurance as the commissioner may deem necessary. The commissioner is hereby authorized to employ such actuarial and other assistance as shall be necessary to carry out the duties of the department; and such employees shall be under the authority and direction of the Insurance Commissioner. The amount to be contributed annually to the fund shall be fixed each year by the Insurance Commissioner at a percentage of the gross

premiums so collected during the preceding year. However, a minimum assessment of One Hundred Dollars ($100.00) shall be charged to each licensed property and casualty insurance company regardless of the gross premium amount collected during the preceding year.

The total contributions collected for the Insurance Department Fund shall not exceed the sum of Seven Hundred Fifty Thousand Dollars ($750,000.00) in each fiscal year.

From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

**HISTORY: Laws, 1987, ch. 422, § 55; Laws, 1990, ch. 557, § 3; Laws, 1991, ch. 430 § 3; Laws, 1998, ch. 451, § 1; Laws, 2016, ch. 459, § 19, eff from and after July 1, 2016.**

**Editor's Notes —** Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

**Amendment Notes —** The 2016 amendment added the last two paragraphs.

**Cross References —** Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

## § 83-2-35. Payment of fee by property and casualty insurers; deposit of fee into Insurance Department Fund; funding of agency expenses; deposit of monies into State General Fund.

(1) This section applies to all forms of property and casualty insurance on risks or operations in this state by any insurer authorized to do business in this state, except:

(a) Accident and health;

(b) Ocean marine insurance;

(c) Reinsurance;

(d) Aircraft liability and aircraft hull insurance;

(e) Title insurance;

(f) Credit accident and health insurance.

(2) All such insurers shall pay to the Commissioner of Insurance a fee of Fifteen Dollars ($15.00) for each form or rate filing filed with the commissioner. The commissioner shall pay such fees into the special fund in the State Treasury designated as the "Insurance Department Fund."

(3) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges

and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(4) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

**HISTORY: Laws, 1991, ch. 467 § 1; Laws, 2016, ch. 459, § 20, eff from and after July 1, 2016.**

**Editor's Notes** — Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

**Amendment Notes** — The 2016 amendment added the last two pargraphs

**Cross References** — Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

## CHAPTER 3.

## COMMISSIONER OF INSURANCE, RATING BUREAU AND RATES

## ARTICLE 1.

## COMMISSIONER OF INSURANCE AND RATING BUREAU.

### § 83-3-24. Factors to be considered when rating fire district, grading fire departments and awarding credits considered in determining overall fire rating based on condition of certain fire equipment.

**Cross References** — State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information, see § 25-1-117.

## CHAPTER 5.

## GENERAL PROVISIONS RELATIVE TO INSURANCE AND INSURANCE COMPANIES

## ARTICLE 1.

## GENERAL PROVISIONS.



## § 83-5-11. Legal process.

### JUDICIAL DECISIONS

**1. Generally**

Supreme Court of Mississippi finds that Miss. Code Ann. § 83-5-11 does not authorize the Mississippi Commissioner of Insurance to act as an agent for service of process for any and every company operating in the insurance business in Mississippi. Cent. Insurers of Gren., Inc. v. Greenwood, 268 So. 3d 493, 2018 Miss. LEXIS 237 (Miss. 2018).

Supreme Court of Mississippi finds that Miss. Code Ann. § 83-5-11 can be interpreted only as providing a procedure for the Mississippi Commissioner of Insurance to follow when he or she is acting as an agent for service of process pursuant to a more specific provision of Miss. Code Ann. tit. 83. Cent. Insurers of Gren., Inc. v. Greenwood, 268 So. 3d 493, 2018 Miss. LEXIS 237 (Miss. 2018).

Trial court erred as a matter of law in holding that the Mississippi Commissioner of Insurance was authorized to act as an insurance producer's agent for service of process purposes where Miss. Code Ann. § 83-5-11 did not authorize the Commissioner to act as an agent for service of process for any and every company operating in the insurance business in Mississippi. Cent. Insurers of Gren., Inc. v. Greenwood, 268 So. 3d 493, 2018 Miss. LEXIS 237 (Miss. 2018).

## § 83-5-17. Revocation of license; administrative fine; funding of agency expenses; deposit of monies into State General Fund.

The Commissioner of Insurance may, after notice and a hearing, revoke the authority of a domestic or foreign insurance company or impose an administrative fine, or both, if it violates or neglects to comply with any provision of law obligatory on it, and whenever in the opinion of the commissioner its condition is unsound, or its assets above its liabilities, exclusive of capital and inclusive of unearned premiums, are less than the amount of its original capital or required unimpaired funds. Such administrative fine shall not exceed Five Thousand Dollars ($5,000.00) per violation and shall be deposited into the special fund in the State Treasury designated as the "Insurance Department Fund."

From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

**HISTORY: Codes, 1906, § 2612; Hemingway's 1917, § 5075; 1930, § 5136; 1942, § 5638; Laws, 1997, ch. 410, § 3; Laws, 2016, ch. 459, § 21, eff from and after July 1, 2016.**

**Editor's Notes —** Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

**Amendment Notes —** The 2016 amendment added the last two paragraphs.

**Cross References —** Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

## § 83-5-28. Cancellation, reduction in coverage, or nonrenewal of coverage; notice; inclusion in policies issued or renewed after June 30, 1989; validity and enforcement of replacement policies; transferring insurers requirements.

(1) A cancellation, reduction in coverage or nonrenewal of liability insurance coverage, fire insurance coverage or single premium multiperil insurance coverage is not effective as to any coverage issued or renewed after June 30, 1989, unless notice is mailed or delivered to the insured and to any named creditor loss payee by the insurer not less than thirty (30) days prior to the effective date of such cancellation, reduction or nonrenewal. This section shall not apply to nonpayment of premium unless there is a named creditor loss

payee, in which case at least ten (10) days' notice is required. The cancellation and nonrenewal notice requirements of this section shall not apply when a replacement policy form is issued by the same insurer or when a transfer of an insured to a licensed affiliate of the insurer occurs, so long as the replacement of policy forms or transfer results in the same or substantially similar coverage and the insurer mails or delivers to the insured at least thirty (30) days prior to the renewal effective date notice of any term or condition that is less favorable to the policyholder.

(2) The provisions of subsection (1) shall be incorporated into each liability, fire and multiperil policy issued or renewed after June 30, 1989; and if such provisions are not expressly stated in the policy, such provisions shall be deemed to be incorporated in the policy.

(3) Whenever a replacement policy form is issued by the same insurer or when transfer of an insured to a licensed affiliate occurs, documents signed by the insured are applicable to the replacement policy form, the coverage transferred to a licensed affiliate insurer, or both, and remain valid and enforceable.

(4) A transferring insurer shall notify the Mississippi Insurance Department at least forty-five (45) days in advance of notifying a policyholder that its personal or commercial lines insurance policies will be transferred to another licensed insurer within the same insurance group or same holding company. The notice shall include the name of insurer transferring the personal or commercial lines policies and the name and financial rating of the insurer receiving the transferred personal or commercial lines policies.

(5) A transferring insurer shall provide the policyholder written notice of the policy transfer at least thirty (30) days prior to expiration of the policy term and shall include the financial rating of the insurer receiving the transferred policy. Such notice must be provided to the policyholder with the notice of renewal premium at least thirty (30) days before the effective date of the transfer.

(6) As used in this section:

(a) "Affiliate transfer" is when an insurer transfers, at renewal or policy expiration, its personal or commercial lines insurance policies to an affiliated licensed insurer that is a member of the same insurance group or same holding company as the transferring insurer. The issuance of a replacement policy form providing the same or substantially similar coverage issued by the same insurer, or the transfer of personal or commercial insurance policies to a licensed affiliate insurer that will issue the same or substantially similar policy, are considered a renewal and will not be treated as a cancellation or nonrenewal. The affiliate transfer must be to a licensed affiliate insurer that has been determined by the commissioner to have the same or better financial strength as the transferring insurer. The policy transfer must be selected on a nondiscriminatory basis.

(b) "Substantially similar" means a policy that provides the same basic coverages but may add, alter or eliminate incidental coverages and may provide coverages using different textual language.

**HISTORY: Laws, 1989, ch. 410, § 1; Laws, 2006, ch. 480, § 1, eff from and after July 1, 2006; Laws, 2018, ch. 312, § 3, eff from and after July 1, 2018.**

**Amendment Notes** — The 2018 amendment added the last sentence of (1); and added (3) through (6).

JUDICIAL DECISIONS

**4. Notification requirements.**

Circuit court properly granted partial summary judgment in favor of a lender in its action to pay for the loss of the insureds' chicken farm because the insurer and brokerage failed to comply with the statutory notification requirements inasmuch as the binder was sufficient to trigger the statutory notification requirements where the record showed that the insurance binder issued by the brokerage and the insurer listed the lender as a mortgagee/loss payee, included the lender's mailing address, and the insurer did not contract to require that a premium be paid before the binder went into effect. James Allen Ins. Brokers v. First Fin. Bank, 267 So. 3d 759, 2019 Miss. LEXIS 165 (Miss. 2019).

## § 83-5-41. Cease and desist orders and modifications thereof; administrative fines; funding of agency expenses; deposit of monies into State General Fund.

(1) If, after such hearing, the commissioner shall determine that the method of competition or the act or practice in question is defined in Section 83-5-35, and that the person complained of has engaged in such method of competition, act or practice in violation of Sections 83-5-29 through 83-5-51, he shall reduce his findings to writing and shall issue and cause to be served upon the person charged with the violation an order requiring such person to cease and desist from engaging in such method of competition, act or practice. In addition to, or in lieu of, the cease and desist order, the commissioner may, after such hearing, impose an administrative fine not to exceed Five Thousand Dollars ($5,000.00) per violation, which shall be deposited into the special fund in the State Treasury designated as the "Insurance Department Fund."

(2) Until the expiration of the time allowed under Section 83-5-43(1) for filing a petition for review (by appeal), if no such petition has been duly filed within such time or, if the petition for review has been filed within such time, then until the transcript of the record in the proceeding has been filed in the circuit court, as hereinafter provided, the commissioner may at any time, upon such notice and in such manner as he shall deem proper, modify or set aside in whole or in part any order issued by him under this section.

(3) After the expiration of the time allowed for filing such a petition for review, if no such petition has been duly filed within such time, the commissioner may, at any time after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any order issued by him under this section whenever in his opinion conditions of fact or of law have so changed as to require such action, or if the public interest shall so require.

(4) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges

and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(5) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

**HISTORY: Codes, 1942, § 5649-07; Laws, 1956, ch. 329, § 7; Laws, 1997, ch. 410, § 4; Laws, 2016, ch. 459, § 22, eff from and after July 1, 2016.**

**Editor's Notes —** Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

**Amendment Notes —** The 2016 amendment added (4) and (5).

**Cross References —** Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

## § 83-5-45. Procedure as to unfair methods of competition and unfair practices which are not defined; funding of agency expenses; deposit of monies into State General Fund.

(1) Whenever the commissioner shall have reason to believe that any person engaged in the business of insurance is engaging in this state in any method of competition or in any act or practice in the conduct of such business which is not defined in Section 83-5-35, that such method of competition is unfair or that such act or practice is unfair or deceptive, and that a proceeding by him in respect thereto would be to the interest of the public, he may issue and serve upon such person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than ten (10) days after the date of the service thereof. Each such hearing shall be conducted in the same manner as the hearings provided in Section 83-5-39. The commissioner shall, after such hearing, make a report in writing in which he shall state his findings as to the facts, and he shall serve a copy thereof upon such person.

(2) If such report charges a violation of Sections 83-5-29 through 83-5-51, and if such method of competition, act or practice has not been discontinued, the commissioner may, through the Attorney General of this state, at any time after thirty (30) days after the service of such report, cause a petition to be filed in the circuit court of this state within the district wherein the person resides, or has his principal place of business, to enjoin and restrain such person from engaging in such method, act or practice. The court shall have jurisdiction of the proceeding and shall have power to make and enter appropriate orders in connection therewith and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public pendente lite.

(3) A transcript of the proceedings before the commissioner, including all evidence taken and the report and findings, shall be filed with such petition. If

either party shall apply to the court for leave to adduce additional evidence and shall show, to the satisfaction of the court, that such additional evidence is material and there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commissioner, the court may order such additional evidence to be taken before the commissioner and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commissioner may modify his findings of fact or make new findings by reason of the additional evidence so taken, and he shall file such modified or new findings with the return of such additional evidence.

(4) If the court finds that the method of competition complained of is unfair or that the act or practice complained of is unfair or deceptive, that the proceeding by the commissioner with respect thereto is to the interest of the public, and that the findings of the commissioner are supported by substantial evidence, it shall issue its order enjoining and restraining the continuance of such method of competition, act or practice.

(5) In addition to, or in lieu of, filing, through the Attorney General, a petition for a cease and desist order, the commissioner may, after a hearing in accordance with subsection (1), impose an administrative fine not to exceed Five Thousand Dollars ($5,000.00) per violation, which shall be deposited into the special fund in the State Treasury designated as the "Insurance Department Fund."

(6) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(7) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

**HISTORY: Codes, 1942, § 5649-09; Laws, 1956, ch. 329, § 9; Laws, 1997, ch. 410 § 5; Laws, 2016, ch. 459, § 23, eff from and after July 1, 2016.**

**Editor's Notes —** Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

**Amendment Notes —** The 2016 amendment added (6) and (7).

**Cross References —** Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

## § 83-5-69. Penalty for failure to file statements and making false return; funding of agency expenses; deposit of monies into State General Fund.

Any company that neglects to make and file its quarterly and annual statement within the time provided in this chapter shall pay to the Commissioner of Insurance One Hundred Dollars ($100.00) for each day's neglect,

which penalty shall be deposited into the special fund in the State Treasury designated as the "Insurance Department Fund"; and upon notice by the commissioner to that effect, its authority to do new business shall cease while such default continues. For willfully making a false annual, quarterly or other statement it is required by law to make, any insurance company, association or order, and the person making oath to or subscribing the same, shall severally be guilty of a misdemeanor; and, upon conviction, be punished by a fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00). Any person making oath to such false statement shall be guilty of the crime of perjury.

From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

**HISTORY: Codes, 1906, § 2646; Hemingway's 1917, § 5112; 1930, § 5221; 1942, § 5735; Laws, 2002, ch. 389, § 1; Laws, 2005, ch. 386, § 3; Laws, 2016, ch. 459, § 24, eff from and after July 1, 2016.**

**Editor's Notes —** Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides: "SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

**Amendment Notes —** The 2016 amendment added the last two paragraphs.

**Cross References —** Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

## § 83-5-72. Life, health and accident insurance companies and health maintenance organizations to contribute to Insurance Department Fund; funding of agency expenses; deposit of monies into State General Fund.

All life, health and accident insurance companies and health maintenance organizations doing business in this state shall contribute annually, at such times as the Insurance Commissioner shall determine, in proportion to their gross premiums collected within the State of Mississippi during the preceding year, to a special fund in the State Treasury to be known as the "Insurance Department Fund" to be expended by the Insurance Commissioner in the payment of the expenses of the Department of Insurance as the commissioner may deem necessary. The commissioner is hereby authorized to employ such actuarial and other assistance as shall be necessary to carry out the duties of the department; and the employees shall be under the authority and direction of the Insurance Commissioner. The amount to be contributed annually to the fund shall be fixed each year by the Insurance Commissioner at a percentage

of the gross premiums so collected during the preceding year. However, a minimum assessment of One Hundred Dollars ($100.00) shall be charged each licensed life, health and accident insurance company regardless of the gross premium amount collected during the preceding year.

The total contributions collected for the Insurance Department Fund shall not exceed the sum of Seven Hundred Fifty Thousand Dollars ($750,000.00) in each fiscal year.

From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

**HISTORY: Laws, 1990, ch. 557, § 4; Laws, 1991, ch. 430 § 4; Laws, 1998, ch. 451, § 2; Laws, 2016, ch. 459, § 25, eff from and after July 1, 2016.**

**Editor's Notes —** Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides: "SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

**Amendment Notes —** The 2016 amendment added the last two paragraphs.

**Cross References —** Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

## § 83-5-73. Fees for commissioner; funding of agency expenses; deposit of monies into State General Fund.

The commissioner shall collect and pay into the special fund in the State Treasury designated as the "Insurance Department Fund" the following fees: for certificate of authority to each general or district agent or manager, Twenty-five Dollars ($25.00); for filing and processing an agent's certificate of authority, Twenty-five Dollars ($25.00); for filing and examining statement preliminary to admission, One Thousand Dollars ($1,000.00); for filing and processing a Form A application, Two Thousand Dollars ($2,000.00); for filing and auditing annual statement, Five Hundred Dollars ($500.00); for filing any other paper required by law, Fifty Dollars ($50.00); for continuing education courses or programs filed by the providers for approval, Fifty Dollars ($50.00); for each certification company licensed status, Forty Dollars ($40.00); for each seal when required, Twenty Dollars ($20.00); for service of process on the commissioner as attorney, Twenty-five Dollars ($25.00).

From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

From and after July 1, 2016, no state agency shall charge another state

agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

**HISTORY: Codes, 1906, § 2630; Hemingway's 1917, § 5096; 1930, § 5222; 1942, § 5736; Laws, 1977, ch. 329, § 2; ch. 398, § 2; Laws, 1985, ch. 433, § 9; Laws, 1988, ch. 526, § 1; Laws, 1991, ch. 428 § 1; Laws, 1994, ch. 613, § 1; Laws, 2008, ch. 440, § 1; Laws, 2016, ch. 459, § 26, eff from and after July 1, 2016.**

**Editor's Notes** — Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:
"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

**Amendment Notes** — The 2016 amendment added the last two paragraphs.

**Cross References** — Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

## § 83-5-77. Publication fees; funding of agency expenses; deposit of monies into State General Fund.

For publication of annual statement, there shall be a fee of Eighty Dollars ($80.00), Forty Dollars ($40.00) of which shall be paid to the publishers and Forty Dollars ($40.00) paid to the special fund in the State Treasury known as the "Insurance Department Fund". The commissioner shall receive for copy of any record or paper in his office, Fifty Cents (50¢) per page, and Twenty Dollars ($20.00) for certifying same, or any fact or data from the records of the office.

From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

**HISTORY: Codes, 1906, § 2632; Hemingway's 1917, § 5098; 1930, § 5224; 1942, § 5738; Laws, 1948, ch. 348, § 1; Laws, 1960, ch. 369, § 2; Laws, 1977, ch. 396; Laws, 1988, ch. 526, § 2; Laws, 1997, ch. 324, § 1; Laws, 2008, ch. 440, § 3; Laws, 2016, ch. 459, § 27, eff from and after July 1, 2016.**

**Editor's Notes** — Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:
"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

**Amendment Notes** — The 2016 amendment added the last two paragraphs.

**Cross References** — Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

# ARTICLE 2.

# AUDIT OF FINANCIAL STATEMENTS OF INSURERS.

Sec.
83-5-102. Definitions.

Sec.
83-5-119. Requirements for audit committees.
83-5-120. Internal audit function requirements.

## § 83-5-102. Definitions.

As used in Sections 83-5-102 through 83-5-125, the following terms have the respective meanings herein set forth unless the context shall require otherwise:

(a) "Audited financial report" means and includes those items specified in Section 83-5-103.

(b) "Accountant" or "independent certified public accountant" means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which they are licensed to practice; for Canadian and British companies, it means a Canadian chartered or British chartered accountant.

(c) "Commissioner" means the Commissioner of Insurance.

(d) "Department" means the Department of Insurance.

(e) "Indemnification" means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing or other misrepresentations made by the insurer or its representatives.

(f) "Insurer" means an insurer as defined in Section 83-5-1 or an authorized insurer as defined in Section 83-21-17.

(g) "Affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(h) "Audit committee" means a committee (or equivalent body) established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers, the internal audit function of an insurer or group of insurers (if applicable), and external audits of financial statements of the insurer or group of insurers. The audit committee of any entity that controls a group of insurers may be deemed to be the audit committee for one or more of these controlled insurers solely for the purposes of this section at the election of the controlling person. Refer to Section 83-5-119(e) for exercising this election. If an audit committee is not designated by the insurer, the insurer's entire board of directors shall constitute the audit committee.

(i) "Independent board member" has the same meaning as described in Section 83-5-119(c).

(j) "Group of insurers" means those licensed insurers included in the reporting requirements of Sections 83-6-1 through 83-6-43, or a set of insurers as identified by management, for the purpose of assessing the effectiveness of internal control over financial reporting.

(k) "Internal control over financial reporting" means a process effected by an entity's board of directors, management and other personnel designed

to provide reasonable assurance regarding the reliability of the financial statements and includes those policies and procedures that:

(i) Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;

(ii) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and

(iii) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements.

(*l*) "RBC" means risk-based capital pursuant to Sections 83-5-401 through 83-5-427.

(m) "SEC" means the United States Securities and Exchange Commission.

(n) "Section 404" means Section 404 of the Sarbanes-Oxley Act of 2002 and the SEC's rules and regulations promulgated thereunder.

(o) "Section 404 Report" means management's report on "internal control over financial reporting" as defined by the SEC and the related attestation report of the independent certified public accountant.

(p) "SOX Compliant Entity" means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002: (i) the preapproval requirements of Section 201 (Section 10A(i) of the Securities Exchange Act of 1934); (ii) the audit committee independence requirements of Section 301 (Section 10A(m)(3) of the Securities Exchange Act of 1934); and (iii) the internal control over financial reporting requirements of Section 404 (Item 308 of SEC Regulation S-K).

(q) "Internal audit function" means a person or persons who provide independent, objective and reasonable assurance designed to add value and improve an organization's operations and accomplish its objectives by bringing a systematic disciplined approach to evaluate and improve the effectiveness of risk management control and governance processes.

**HISTORY: Laws, 1991, ch. 550, § 3; Laws, 2007, ch. 369, § 2; Laws, 2009, ch. 334, § 1, eff from and after Jan. 1, 2010; Laws, 2019, ch. 326, § 1, eff from and after January 1, 2020.**

**Amendment Notes —** The 2019 amendment, effective January 1, 2020, substituted "Sections 83-5-102 through 83-5-125" for "Sections 83-5-102 through 83-5-113" in the introductory paragraph; added "or an authorized insurer as defined in Section 83-21-17" at the end of (f); inserted "the internal audit function of an insurer or group of insurers (if applicable)" preceding "and" and "external" thereafter in (h); and added (q).

## § 83-5-119. Requirements for audit committees.

Every insurer required to file an annual audited financial report pursuant to this section shall designate a group of individuals as constituting its audit

committee. The audit committee of an entity that controls an insurer may be deemed to be the insurer's audit committee for purposes of this section at the election of the controlling person.

This section shall not apply to foreign or alien insurers licensed in this state or an insurer that is a SOX Compliant Entity or a direct or indirect wholly owned subsidiary of a SOX Compliant Entity.

(a) The audit committee shall be directly responsible for the appointment, compensation and oversight of the work of any accountant (including resolution of disagreements between management and the accountant regarding financial reporting) for the purpose of preparing or issuing the audited financial report or related work pursuant to this section. Each accountant shall report directly to the audit committee.

(b) Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to paragraph (e) and Section 83-5-102(h).

(c) In order to be considered independent for purposes of this section, a member of the audit committee may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary thereof. However, if law requires board participation by otherwise nonindependent members, that law shall prevail and such members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one (1) of its affiliates.

(d) If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the state, may remain an audit committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity or one (1) year from the occurrence of the event that caused the member to be no longer independent.

(e) To exercise the election of the controlling person to designate the audit committee for purposes of this section, the ultimate controlling person shall provide written notice to the commissioners of the affected insurers. Notification shall be made timely prior to the issuance of the statutory audit report and include a description of the basis for the election. The election can be changed through notice to the commissioner by the insurer, which shall include a description of the basis for the change. The election shall remain in effect for perpetuity, until rescinded.

(f)(i) The audit committee shall require the accountant that performs for an insurer any audit required by this section to timely report to the audit committee in accordance with the requirements of Statement on Auditing Standard No. 114, The Auditor's Communication With Those Charged With Governance or its replacement, including:

1. All significant accounting policies and material permitted practices;

2. All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and

3. Other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

(ii) If an insurer is a member of an insurance holding company system, the reports required by paragraph (f)(i) may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

(g) The proportion of independent audit committee members shall meet or exceed the following criteria:

**Prior Calendar Year Direct Written and Assumed Premiums**

| **$0 - $300,000,000** | **Over $300,000,000 - $500,000,000** | **Over $500,000,000** |
|---|---|---|
| No minimum requirements. See also Notes A and B. | Majority (50% or more) of members shall be independent. See also Notes A and B. | Supermajority of members (75% or more) shall be independent. See also Note A. |

**Note A:** The commissioner has authority afforded by state law to require the entity's board to enact improvements to the independence of the audit committee membership if the insurer is in a RBC action level event, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer.

**Note B:** All insurers with less than Five Hundred Million Dollars ($500,000,000.00) in prior calendar year direct written and assumed premiums are encouraged to structure their audit committees with at least a supermajority of independent audit committee members.

**Note C:** Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from nonaffiliates for the reporting entities.

(h) An insurer with direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program less than Five Hundred Million Dollars ($500,000,000.00), may make application to the commissioner for a waiver from the requirements of this section based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from the requirements of this section with the states that it is licensed or doing business.

(i) An insurer or group of insurers that is not required to have

independent audit committee members or only a majority of independent audit committee members (as opposed to a supermajority) because the total written and assumed premium is below the threshold and subsequently becomes subject to one (1) of the independence requirements due to changes in premium shall have one (1) year following the year the threshold is exceeded to comply with the independence requirements. Likewise, an insurer that becomes subject to one (1) of the independence requirements as a result of a business combination shall have one (1) calendar year following the date of acquisition or combination to comply with the independence requirements.

(j) The audit committee of an insurer or group of insurers shall be responsible for overseeing the insurer's internal audit function and granting the person or persons performing the function suitable authority and resources to fulfill their responsibilities if required by Section 83-5-120.

**HISTORY: Laws, 2009, ch. 334, § 8, eff from and after Jan. 1, 2010; Laws, 2019, ch. 326, § 2, eff from and after January 1, 2020.**

**Amendment Notes —** The 2019 amendment, effective January 1, 2020, added (j); and made a minor punctuation change.

## § 83-5-120. Internal audit function requirements.

(1) **Exemption.** An insurer is exempt from the requirements of this section if:

(a) The insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than Five Hundred Million Dollars ($500,000,000.00); and

(b) If the insurer is a member of a group of insurers, the group has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than One Billion Dollars ($1,000,000,000.00).

**Note:** An insurer or group of insurers exempt from the requirements of this section is encouraged, but not required, to conduct a review of the insurer business type, sources of capital, and other risk factors to determine whether an internal audit function is warranted. The potential benefits of an internal audit function should be assessed and compared against the estimated costs.

(2) **Function.** The insurer or group of insurers shall establish an internal audit function providing independent, objective and reasonable assurance to the audit committee and insurer management regarding the insurer's governance, risk management and internal controls. This assurance shall be provided by performing general and specific audits, reviews and tests and by employing other techniques deemed necessary to protect assets, evaluate control effectiveness and efficiency, and evaluate compliance with policies and regulations.

(3) **Independence.** In order to ensure that internal auditors remain objective, the internal audit function must be organizationally independent. Specifically, the internal audit function will not defer ultimate judgment on audit matters to others, and shall appoint an individual to head the internal audit function who will have direct and unrestricted access to the board of directors. Organizational independence does not preclude dual-reporting relationships.

(4) **Reporting.** The head of the internal audit function shall report to the audit committee regularly, but no less than annually, on the periodic audit plan, factors that may adversely impact the internal audit function's independence or effectiveness, material findings from completed audits and the appropriateness of corrective actions implemented by management as a result of audit findings.

(5) **Additional requirements.** If an insurer is a member of an insurance holding company system or included in a group of insurers, the insurer may satisfy the internal audit function requirements set forth in this section at the ultimate controlling parent level, an intermediate holding company level or the individual legal entity level.

**HISTORY: Laws, 2019, ch. 326, § 3, eff from and after January 1, 2020.**

## ARTICLE 3.

## PERIODIC FINANCIAL EXAMINATIONS OF INSURERS.

Sec.



### § 83-5-205. Examination of insurers; examination of foreign or alien insurer; acceptance of examination report prepared by insurance department of another state; financial and market analysis review of all insurers.

(1) The commissioner or any of his examiners may conduct an examination under Sections 83-5-201 through 83-5-217 of any company as often as the commissioner, in his or her sole discretion, deems appropriate but, at a minimum, shall conduct an examination of every insurer licensed in this state not less frequently than once every five (5) years. In scheduling and determining the nature, scope and frequency of the examinations, the commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants and other criteria as set forth in the Examiners' Handbook adopted by the National Association of Insurance

Commissioners and in effect when the commissioner exercises discretion under this section.

(2) For purposes of completing an examination of any company under Sections 83-5-201 through 83-5-217, the commissioner may examine or investigate any person, or the business of any person, insofar as such examination or investigation, in the sole discretion of the commissioner, is necessary or material to the examination of the company.

(3) In lieu of an examination under Sections 83-5-201 through 83-5-217 of any foreign or alien insurer licensed in this state, the commissioner may accept an examination report on the company as prepared by the insurance department for the company's state of domicile or port-of-entry state until January 1, 1994. Thereafter, such reports may only be accepted if (a) the insurance department was at the time of the examination accredited under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program; or (b) the examination is performed under the supervision of an accredited insurance department or with the participation of one or more examiners who are employed by such an accredited state insurance department and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

(4) In addition to those examinations performed by the commissioner pursuant to subsection (1) of this section, the commissioner shall conduct financial and market analysis review of all insurers authorized to do business in this state and may conduct regulatory review of entities regulated by the department. The reviews may include the annual statement and the market conduct annual statement of the insurer or regulated entity reviewed, company financial reports rendered pursuant to good and acceptable accounting practices, results of insurance solvency standards testing as performed by the National Association of Insurance Commissioners, results of prior examinations and office reviews, management changes, consumer complaints, and such other relevant information as from time to time may be required by the commissioner.

(5) In lieu of conducting a financial or market analysis under this section of any foreign or alien insurer licensed in this state, the commissioner may rely upon the financial or market analysis conducted by the insurance department of the company's state of domicile or port-of-entry accredited under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program.

(6) Every insurer or regulated entity shall produce and make freely accessible to the commissioner the accounts, records, documents and files in its possession or control. Failure by an insurer or regulated entity to supply information requested by the department during a course of financial or market analysis may subject the insurer or regulated entity to revocation or suspension of its license, or, in lieu thereof, a fine not to exceed Ten Thousand Dollars ($10,000.00) per occurrence.

**HISTORY: Laws, 1992, ch. 319, § 3; Laws, 2012, ch. 364, § 1; Laws, 2013, ch. 416, § 1, eff from and after July 1, 2014.**

**Editor's Notes —** Laws of 2013, ch. 416, § 16, provides:

"SECTION 16. This act shall take effect and be in force from and after July 1, 2014, except for the provisions contained in Sections 3 through 14, which shall take effect and be in force from and after July 1, 2013."

**Amendment Notes —** The 2012 amendment substituted "five (5)" for "three (3)" at the end of the first sentence of (1).

The 2013 amendment, effective July 1, 2014, added (4) through (6).

## § 83-5-209. Contents of examination report; filing of report; opportunity to respond to report; review of report by and order of commissioner; hearings; confidentiality of examination reports; disclosure of reports.

(1) All examination reports shall be comprised of only facts appearing upon the books, records or other documents of the company, its agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

(2) No later than sixty (60) days following completion of the examination, the examiner in charge shall file with the department a verified written report of examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together with a notice which shall afford the company examined a reasonable opportunity of not more than thirty (30) days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(3) Within thirty (30) days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of examiner work papers and enter an order:

(a) Adopting the examination report as filed, or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure such violation; or

(b) Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information and refiling in accordance with subsections (1) and (2) of this section; or

(c) Calling for an investigatory hearing with no less than twenty (20) days' notice to the company for purposes of obtaining additional documentation, data, information and testimony.

(4) All orders entered in accordance with subsection (3)(a) of this section shall be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner work papers, and any written submissions or rebuttals. Any such order shall

be considered a final administrative decision and may be appealed under the Mississippi Administrative Procedures Act and shall be served upon the company by certified mail, together with a copy of the adopted examination report. Within thirty (30) days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(5) Any hearing conducted under subsection (3)(c) of this section by the commissioner or authorized representative shall be conducted as a nonadversarial confidential investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner's review of relevant work papers or by the written submission or rebuttal of the company. Within twenty (20) days of the conclusion of any such hearing, the commissioner shall enter an order in accordance with subsection (3)(a) of this section.

(a) The commissioner shall not appoint an examiner as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously with discovery by the company limited to examiner work papers which tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or his representative may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation whether under the control of the department, the company or other persons. The documents produced shall be included in the record, and testimony taken by the commissioner or his representative shall be under oath and preserved for the record.

Nothing contained in this section shall require the department to disclose any information or records which would indicate or show the existence or content of any investigation or activity of a criminal justice agency.

(b) The hearing shall proceed with the commissioner or his representative posing questions to the persons subpoenaed. Thereafter, the company and the department may present testimony relevant to the investigation. Cross-examination shall be conducted only by the commissioner or his representative. The company and the department shall be permitted to make closing statements and may be represented by counsel of their choice.

(6)(a) Upon the adoption of the examination report under subsection (3)(a) of this section, the commissioner shall continue to hold the content of the examination report as private and confidential information for a period of ten (10) days except to the extent provided in subsection (2) of this section. Thereafter, the commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication.

(b) Nothing contained in Sections 83-5-201 through 83-5-217 shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of this or any other state or country, or to law enforcement officials of this or any other

state or agency of the federal government at any time, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with Sections 83-5-201 through 83-5-217.

(c) If the commissioner determines that regulatory action is appropriate as a result of any examination, he may initiate any proceedings or actions as provided by law.

(7)(a)(i) Except as provided in subsection (6) and in this subsection (7), documents, materials or other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in the course of an examination made under Sections 83-5-201 through 83-5-217, or in the course of analysis by the commissioner of the financial condition or market conduct of a company, shall be confidential by law and privileged, shall not be subject to the Mississippi Public Records Act, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(ii) Documents, materials or other information, including, but not limited to, all working papers, and copies thereof, in the possession or control of the National Association of Insurance Commissioners and its affiliates and subsidiaries shall be confidential by law and privileged, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action, if they are:

1. Created, produced or obtained by or disclosed to the National Association of Insurance Commissioners and its affiliates and subsidiaries in the course of the National Association of Insurance Commissioners and its affiliates and subsidiaries assisting an examination made under Sections 83-5-201 through 83-5-217, or the laws of another state or jurisdiction that is substantially similar to Sections 83-5-201 through 83-5-217, or assisting a commissioner in the analysis of the financial condition or market conduct of a company; or

2. Disclosed to the National Association of Insurance Commissioners and its affiliates and subsidiaries under paragraph (c) of this subsection by a commissioner.

(b) Neither the commissioner nor any person who received the documents, material or other information while acting under the authority of the commissioner, including the National Association of Insurance Commissioners and its affiliates and subsidiaries, shall be permitted to testify in any private civil action concerning any confidential documents, materials or information subject to paragraph (a) of this subsection.

(c) In order to assist in the performance of the commissioner's duties, the commissioner:

(i) May share documents, materials or other information, including the confidential and privileged documents, materials or information

subject to paragraph (a) of this subsection, with other state, federal and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, communication or other information;

(ii) May receive documents, materials, communications or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(iii) May enter into agreements governing the sharing and use of information consistent with this subsection.

(d) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in paragraph (c) of this subsection.

(e) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this subsection shall be available and enforced in any proceeding in, and in any court of, this state.

(f) For the purposes of this subsection, the terms "department," "insurance department," "law enforcement agency," "regulatory agency," and the "National Association of Insurance Commissioners" include, but are not limited to, their employees, agents, consultants and contractors.

**HISTORY: Laws, 1992, ch. 319, § 5; Laws, 2013, ch. 416, § 2, eff from and after July 1, 2014.**

**Editor's Notes —** Laws of 2013, ch. 416, § 16, provides:

"SECTION 16. This act shall take effect and be in force from and after July 1, 2014, except for the provisions contained in Sections 3 through 14, which shall take effect and be in force from and after July 1, 2013."

**Amendment Notes —** The 2013 amendment, effective July 1, 2014, rewrote (7), which read: "All working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under Sections 83-5-201 through 83-5-217 may be held by the commissioner as a record not required to be made public under the Mississippi Public Records Act."

## ARTICLE 4.

## "INSURABLE INTEREST" REQUIREMENTS.

### § 83-5-251. Procurer of insurance must have insurable interest; insurable interest defined; insurer reliance on applicant's representations; insurable interest of charitable, etc. organization.

JUDICIAL DECISIONS

**3. Insurable interest and divorce.**

In this divorce case, it was not necessary for the wife to retain an insurable interest with the husband in order for the life insurance policy to remain valid, only to have an interest at the time when the contract was made, and even though the husband no longer wanted to name the wife as the beneficiary, he contracted to do so in the agreement. Voulters v. Voulters, 196 So. 3d 1019, 2015 Miss. App. LEXIS 654 (Miss. Ct. App. 2015), cert. denied, 202 So. 3d 612, 2016 Miss. LEXIS 310 (Miss. 2016).

## ARTICLE 7.

## RISK-BASED CAPITAL LEVEL REQUIREMENTS.

Sec.



### § 83-5-401. Definitions.

As used in Sections 83-5-401 through 83-5-427, the following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Adjusted RBC report" means a risk-based capital report which has been adjusted by the commissioner in accordance with Section 83-5-403(5).

(b) "Corrective order" means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required.

(c) "Domestic insurer" means any insurance company domiciled in this state.

(d) "Foreign insurer" means any insurance company which is licensed to do business in this state under Section 83-21-1 et seq., but is not domiciled in this state.

(e) "NAIC" means the National Association of Insurance Commissioners.

(f) "Life and/or health insurer" means any insurance company licensed under Section 83-19-1 et seq., or a licensed property and casualty insurer writing only accident and health insurance.

(g) "Property and casualty insurer" means any insurance company licensed under Section 83-19-1 et seq., but shall not include monoline mortgage guaranty insurers, financial guaranty insurers and title insurers.

(h) "Negative trend" means, with respect to a life and/or health insurer, negative trend over a period of time, as determined in accordance with the "Trend Test Calculation" included in the Life RBC instructions.

(i) "RBC instructions" means the RBC report including risk-based capital instructions adopted by the NAIC, as such RBC instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(j) "RBC level" means an insurer's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC where:

(i) "Company action level RBC" means, with respect to any insurer, the product of 2.0 and its authorized control level RBC;

(ii) "Regulatory action level RBC" means the product of 1.5 and its authorized control level RBC;

(iii) "Authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions;

(iv) "Mandatory control level RBC" means the product of .70 and the authorized control level RBC.

(k) "RBC plan" means a comprehensive financial plan containing the elements specified in Section 83-5-405(2). If the commissioner rejects the RBC plan, and it is revised by the insurer, with or without the commissioner's recommendation, the plan shall be called the "revised RBC plan."

(*l*) "RBC report" means the report required in Section 83-5-403.

(m) "Total adjusted capital" means the sum of:

(i) An insurer's statutory capital and surplus as determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed under Section 83-5-55; and

(ii) Such other items, if any, as the RBC instructions may provide.

(n) "Domestic health organization insurer" means a health organization insurer domiciled in this state.

(o) "Foreign health organization insurer" means a health organization insurer that is licensed to do business in this state under Section 83-21-1 et seq., but is not domiciled in this state.

(p) "Health organization insurer" means a health maintenance organization, limited health service organization, dental or vision plan, hospital, medical and dental indemnity or service corporation or other managed care organization that holds a certificate of authority under Section 83-41-305.

This definition does not include an organization that is licensed as either a life and health insurer or property and casualty insurer and that is otherwise subject to either the life or property and casualty RBC requirements.

**HISTORY: Laws, 1996, ch. 478, § 1; Laws, 2010, ch. 340, § 1; Laws, 2013, ch. 416, § 3, eff from and after July 1, 2013.**

**Editor's Notes —** Laws of 2013, ch. 416, § 16, provides:

"SECTION 16. This act shall take effect and be in force from and after July 1, 2014, except for the provisions contained in Sections 3 through 14, which shall take effect and be in force from and after July 1, 2013."

**Amendment Notes —** The 2013 amendment added (n) through (p).

## § 83-5-403. Filing of RBC report; determination of insurer's RBC; maintenance of capital above prescribed RBC level; adjustment of report.

(1) Every domestic insurer shall, on or before each March 1, the filing date, prepare and submit to the commissioner a report of its RBC levels as of the end of the calendar year just ended, in a form and containing such information as is required by the RBC instructions. In addition, every domestic insurer shall file its RBC report:

(a) With the NAIC in accordance with the RBC instructions; and

(b) With the insurance commissioner in any state in which the insurer is authorized to do business, if the insurance commissioner has notified the insurer of its request in writing, in which case the insurer shall file its RBC report not later than the later of:

(i) Fifteen (15) days from the receipt of notice to file its RBC report with that state; or

(ii) The filing date.

(2) A life and health insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take into account, and may adjust for the covariance between, the following factors determined in each case by applying the factors in the manner set forth in the RBC instructions.

(a) The risk with respect to the insurer's assets;

(b) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(c) The interest rate risk with respect to the insurer's business; and

(d) All other business risks and such other relevant risks as are set forth in the RBC instructions.

(3) A property and casualty insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take the following into account, and may adjust for the covariance between, determined in each case by applying the factors in the manner set forth in the RBC instructions:

(a) Asset risk;

(b) Credit risk;

(c) Underwriting risk; and

(d) All other business risks and such other relevant risks as are set forth in the RBC instructions.

(4) A health organization insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take the following into account (and may adjust for the covariance between) determined in each case by applying the factors in the manner set forth in the RBC instructions:

(a) Asset risk;

(b) Credit risk;

(c) Underwriting risk; and

(d) All other business risks and such other relevant risks as are set forth in the RBC instructions.

(5) An excess of capital over the amount produced by the risk-based capital requirements contained in Sections 83-5-401 through 83-5-427 and the formulas, schedules and instructions referenced in Sections 83-5-401 through 83-5-427, is desirable in the business of insurance. Accordingly, insurers should seek to maintain capital above the RBC levels required by Sections 83-5-401 through 83-5-427. Additional capital is used and useful in the insurance business and helps to secure an insurer against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in Sections 83-5-401 through 83-5-427.

(6) If a domestic insurer files a RBC report which in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the RBC report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment. A RBC report as so adjusted is referred to as an "adjusted RBC report."

**HISTORY: Laws, 1996, ch. 478, § 2; Laws, 2010, ch. 340, § 2; Laws, 2013, ch. 416, § 4, eff from and after July 1, 2013.**

**Editor's Notes —** Laws of 2013, ch. 416, § 16, provides:

"SECTION 16. This act shall take effect and be in force from and after July 1, 2014, except for the provisions contained in Sections 3 through 14, which shall take effect and be in force from and after July 1, 2013."

**Amendment Notes —** The 2013 amendment added (4) and renumbered former (4) and (5) as (5) and (6).

## § 83-5-405. Procedure upon occurrence of company action level event.

(1) "Company action level event" means any of the following events:

(a) The filing of a RBC report by an insurer which indicates that:

(i) The insurer's total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC;

(ii) If a life and/or health insurer, the insurer has total adjusted capital which is greater than or equal to its company action level RBC but

less than the product of its authorized control level RBC and 3.0 and has a negative trend; or

(iii) If a property and casualty insurer, the insurer has total adjusted capital which is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the property and casualty RBC instructions;

(iv) If a health organization insurer, the insurer has total adjusted capital which is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and 3.0 and triggers the trend test determined in accordance with the trend test calculations included in the health RBC instructions;

(b) The notification by the commissioner to the insurer of an adjusted RBC report that indicates an event in paragraph (a) of this subsection, provided the insurer does not challenge the adjusted RBC report under Section 83-5-413; or

(c) If, under Section 83-5-413, an insurer challenges an adjusted RBC report that indicates the event in paragraph (a) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(2) In the event of a company action level event, the insurer shall prepare and submit to the commissioner a RBC plan which shall:

(a) Identify the conditions which contribute to the company action level event;

(b) Contain proposals of corrective actions which the insurer intends to take and would be expected to result in the elimination of the company action level event;

(c) Provide projections of the insurer's financial results in the current year and at least the four (4) succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital and surplus. The projections for both new and renewal business might include separate projections for each major line of business and separately identify each significant income, expense and benefit component;

(d) Identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

(e) Identify the quality of, and problems associated with, the insurer's business, including, but not limited to, its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance, if any, in each case.

(3) The RBC plan shall be submitted:

(a) Within forty-five (45) days of the company action level event; or

(b) If the insurer challenges an adjusted RBC report under Section 83-5-413, within forty-five (45) days after notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(4) Within sixty (60) days after the submission by an insurer of a RBC plan to the commissioner, the commissioner shall notify the insurer whether

the RBC plan shall be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines the RBC plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions which will render the RBC plan satisfactory, in the judgment of the commissioner. Upon notification from the commissioner, the insurer shall prepare a revised RBC plan, which may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised RBC plan to the commissioner:

(a) Within forty-five (45) days after the notification from the commissioner; or

(b) If the insurer challenges the notification from the commissioner under Section 83-5-413, within forty-five (45) days after a notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(5) In the event of a notification by the commissioner to an insurer that the insurer's RBC plan or revised RBC plan is unsatisfactory, the commissioner may at the commissioner's discretion, subject to the insurer's right to a hearing under Section 83-5-413, specify in the notification that the notification constitutes a regulatory action level event.

(6) Every domestic insurer that files a RBC plan or revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in which the insurer is authorized to do business if:

(a) Such state has a RBC provision substantially similar to Section 83-5-415(1); and

(b) The insurance commissioner of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the RBC plan or revised RBC plan in that state no later than the later of:

(i) Fifteen (15) days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with the state; or

(ii) The date on which the RBC plan or revised RBC plan is filed under Section 83-5-405(3) and (4).

**HISTORY: Laws, 1996, ch. 478, § 3; Laws, 2010, ch. 340, § 3; Laws, 2013, ch. 416, § 5; Laws, 2016, ch. 304, § 1, eff from and after July 1, 2016.**

**Editor's Notes —** Laws of 2013, ch. 416, § 16, provides:

"SECTION 16. This act shall take effect and be in force from and after July 1, 2014, except for the provisions contained in Sections 3 through 14, which shall take effect and be in force from and after July 1, 2013."

**Amendment Notes —** The 2013 amendment added (1)(a)(iv).

The 2016 amendment substituted "3.0 and has a negative trend" for "2.5 and has a negative trend" in (1)(a)(ii).

## § 83-5-417. Relationship with other laws; promulgation of rules and regulations; exemption of domestic insurers and domestic health organization insurers.

(1) The provisions of Sections 83-5-401 through 83-5-427 are supplemen-

tal to any other provisions of the laws of this state and shall not preclude or limit any other powers or duties of the commissioner under such laws.

(2) The commissioner may promulgate rules and regulations necessary for the implementation of Sections 83-5-401 through 83-5-427.

(3) The commissioner may exempt from the application of Sections 83-5-401 through 83-5-427 any domestic insurer, other than a domestic health organization insurer, that:

(a) Writes direct business only in this state;

(b) Writes direct annual premiums of Two Million Dollars ($2,000,000.00) or less; and

(c) Assumes no reinsurance in excess of five percent (5%) of direct premium written.

(4) The commissioner may exempt from the application of Sections 83-5-401 through 83-5-427 a domestic health organization insurer that:

(a) Writes direct business only in this state;

(b) Assumes no reinsurance in excess of five percent (5%) of direct premium written; and

(c) Writes direct annual premiums for comprehensive medical business of Two Million Dollars ($2,000,000.00) or less, or is a limited health service organization that covers less than two thousand (2,000) lives.

**HISTORY: Laws, 1996, ch. 478, § 9; Laws, 2013, ch. 416, § 6, eff from and after July 1, 2013.**

**Editor's Notes —** Laws of 2013, ch. 416, § 16, provides:

"SECTION 16. This act shall take effect and be in force from and after July 1, 2014, except for the provisions contained in Sections 3 through 14, which shall take effect and be in force from and after July 1, 2013."

**Amendment Notes —** The 2013 amendment inserted "other than a domestic health organization insurer," following "any domestic insurer" in the first paragraph of (3); and added (4).

## § 83-5-427. Requirements for RBC reports for certain insurers for 1996; requirements for RBC reports for health organization insurers for 2013.

(1) For RBC reports required to be filed by life insurers with respect to 1996, the following requirements shall apply in lieu of the provisions of Sections 83-5-405, 83-5-407, 83-5-409, and 83-5-411.

(a) In the event of a company action level event with respect to a domestic insurer, the commissioner shall take no regulatory action hereunder.

(b) In the event of a regulatory action level event under Section 83-5-407(1)(a), (b) or (c), the commissioner shall take the actions required under Section 83-5-405.

(c) In the event of a regulatory action level event under Section 83-5-407(1)(d), (e), (f), (g), (h) or (i), or an authorized control level event, the commissioner shall take the actions required under Section 83-5-407 with respect to the insurer.

(d) In the event of a mandatory control level event with respect to an insurer, the commissioner shall take the actions required under Section 83-5-409 with respect to the insurer.

(2) For RBC reports required to be filed by property and casualty insurers with respect to 1996, the following requirements shall apply in lieu of the provisions of Sections 83-5-405, 83-5-407, 83-5-409, and 83-5-411:

(a) In the event of a company action level event with respect to a domestic insurer, the commissioner shall take no regulatory action hereunder.

(b) In the event of a regulatory action level event under Section 83-5-407(1)(a), (b) or (c), the commissioner shall take the actions required under Section 83-5-405.

(c) In the event of a regulatory action level event under Section 83-5-407(1)(d), (e), (f), (g), (h) or (i), or an authorized control level event, the commissioner shall take the actions required under Section 83-5-407 with respect to the insurer.

(d) In the event of a mandatory control level event with respect to an insurer, the commissioner shall take the actions required under Section 83-5-409 with respect to the insurer.

(3) For RBC reports required to be filed by health organization insurers with respect to 2013, the following requirements shall apply in lieu of the provisions of Sections 83-5-405, 83-5-407, 83-5-409 and 83-5-411:

(a) In the event of a company action level event with respect to a domestic health organization insurer, the commissioner shall take no regulatory action hereunder;

(b) In the event of a regulatory action level event under Section 83-5-407(1)(a), (b) or (c), the commissioner shall take the actions required under Section 83-5-405;

(c) In the event of a regulatory action level event under Section 83-5-407(1)(d), (e), (f), (g), (h) or (i), or an authorized control level event, the commissioner shall take the actions required under Section 83-5-407 with respect to the health organization insurer; and

(d) In the event of a mandatory control level event with respect to a health organization insurer, the commissioner shall take the actions required under Section 83-5-409 with respect to the health organization insurer.

**HISTORY: Laws, 1996, ch. 478, § 14; Laws, 2013, ch. 416, § 7, eff from and after July 1, 2013.**

**Editor's Notes —** Laws of 2013, ch. 416, § 16, provides:

"SECTION 16. This act shall take effect and be in force from and after July 1, 2014, except for the provisions contained in Sections 3 through 14, which shall take effect and be in force from and after July 1, 2013."

**Amendment Notes —** The 2013 amendment added (3).

# ARTICLE 8.

# PROPERTY AND CASUALTY ACTUARIAL OPINION ACT.

Sec.
83-5-507. Repealed.

## § 83-5-501. Title.

**HISTORY: Laws, 2009, ch. 441, § 1; reenacted without change, Laws, 2012, ch. 306, § 1, eff from and after July 1, 2012.**

**Editor's Notes** — This section was reenacted without change by Laws of 2012, ch. 306, effective from and after July 1, 2012. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

**Amendment Notes** — The 2012 amendment reenacted the section without change.

## § 83-5-503. Actuarial opinion of reserves and supporting documentation.

**HISTORY: Laws, 2009, ch. 441, § 2; reenacted without change, Laws, 2012, ch. 306, § 2, eff from and after July 1, 2012.**

**Editor's Notes** — This section was reenacted without change by Laws of 2012, ch. 306, effective from and after July 1, 2012. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

**Amendment Notes** — The 2012 amendment reenacted the section without change.

## § 83-5-505. Confidentiality.

**HISTORY: Laws, 2009, ch. 441, § 3; reenacted without change, Laws, 2012, ch. 306, § 3, eff from and after July 1, 2012.**

**Editor's Notes** — This section was reenacted without change by Laws of 2012, ch. 306, effective from and after July 1, 2012. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

**Amendment Notes** — The 2012 amendment reenacted the section without change.

## § 83-5-507. Repealed.

Repealed by Laws of 2012, ch. 306, § 4, effective July 1, 2012.

§ 83-5-507. [Laws, 2009, ch. 441, § 4, eff from and after Jan. 1, 2010.]

**Editor's Notes** — Former § 83-5-507 would have repealed §§ 83-5-501 through 83-5-507, effective July 1, 2012.

# ARTICLE 9.

# PROVIDER-SPONSORED HEALTH PLANS.



## § 83-5-601. Legislative findings and intent.

(1) In order to encourage and facilitate collaboration between Mississippi Medicaid providers and managed care entities contracting on a capitated basis with the Division of Medicaid pursuant to Section 43-13-117(H), to align incentives in support of integrated and coordinated health care delivery, and to encourage the development of appropriate population or community health strategies to better serve Medicaid beneficiaries and the state's health care delivery system as a whole, the Legislature hereby authorizes and encourages the creation of provider-sponsored health plans as defined in Section 83-5-603.

(2) Whereas, for the reasons stated in subsection (1), the authorization and development of provider-sponsored health plans as defined in Section 83-5-603 are vital to the continued delivery and improvement of health care in this state and otherwise in the best interests of the state and its citizens, and notwithstanding any other provision of law to the contrary, a provider-sponsored health plan, and its owners, officers, directors, committee members, agents, representatives, and employees, when performing the functions authorized by this article, in carrying out the terms of any contract with or program of the Division of Medicaid, and in collaborating and communicating with hospitals, physicians, and other providers for such purposes, shall be considered to be acting pursuant to clearly expressed state policy as established in this article under the supervision of the State of Mississippi and shall be immune from liability under state or federal antitrust laws while so acting.

**HISTORY: Laws, 2015, ch. 446, § 1, eff from and after July 1, 2015.**

**Editor's Notes —** Laws of 2015, ch. 446, § 5 provides:
"SECTION 5. This act shall be codified as a separate article within Chapter 5, Title 83, Mississippi Code of 1972."

## § 83-5-603. Provider-Sponsored Health Plan defined.

As used in this article, "Provider-Sponsored Health Plan" means a Mississippi not-for-profit corporation formed for the purposes of operating a not-for-profit health plan or managed care entity, with its principal place of business within the State of Mississippi, and which is owned and governed exclusively by (a) not-for-profit Mississippi hospital or physician industry or trade association in which the majority of the hospitals or physicians within

the state are members, or (b) a combination of (i) not-for-profit Mississippi hospital or physician industry or trade associations that represent a majority of the hospitals or physicians within the state, and (ii) licensed Mississippi hospitals or physicians who participate in the Mississippi Medicaid Program. At least one (1) purpose of the provider-sponsored health plan shall be to contract with the Division of Medicaid to provide managed care services on a capitated basis pursuant to Section 43-13-117(H). To qualify as a provider-sponsored health plan under this section, the entity must further meet the requirements of Section 83-5-607.

**HISTORY: Laws, 2015, ch. 446, § 2, eff from and after July 1, 2015.**

## § 83-5-605. Providers of provider-sponsored health plans must meet certain requirements before offering or providing services.

Before offering or providing services to persons residing in this state, the Department of Insurance shall certify that any entity applying to operate in this state as a provider-sponsored health plan meets the definition provided in Section 83-5-603 and has been licensed as either a health maintenance organization pursuant to Section 83-41-1 et seq., or as an insurance company pursuant to Section 83-19-1 et seq. Provider-sponsored health plans shall comply with the requirement for health maintenance organizations as established by the department pursuant to Section 83-41-1 et seq., or an insurance company pursuant to Section 83-19-1 et seq.

**HISTORY: Laws, 2015, ch. 446, § 3, eff from and after July 1, 2015.**

## § 83-5-607. Requirements of provider-sponsored health plans.

Provider-sponsored health plans shall:

(a) Demonstrate ownership or substantial representation in governance and operations by licensed Mississippi hospitals and physicians that participate in the Mississippi Medicaid Program. Notwithstanding any other provision of law to the contrary, for the purpose of meeting this requirement, hospitals owned by the state and hospitals owned by local governmental entities are authorized to provide funds for the establishment and operation of provider-sponsored health plans, provided the hospital governing body first determines that such participation is in the best interest of the hospital and the communities it serves;

(b) Satisfy the minimum financial and reserve requirements to be established by the Department of Insurance;

(c) Meet all contractual requirements for contracting with the Division of Medicaid to provide managed care or coordinated care services to Medicaid recipients pursuant to Section 43-13-117(H). Compliance with this requirement shall be determined and supervised by the Division of Medicaid. Nothing in this article shall be construed as giving the Department of

Insurance responsibility or authority for the operation of the State Medicaid Program; and

(d) Such other requirements as may be established by valid regulation of the Department of Insurance.

**HISTORY: Laws, 2015, ch. 446, § 4, eff from and after July 1, 2015.**

## ARTICLE 10.

## CORPORATE GOVERNANCE ANNUAL DISCLOSURES

Sec.



### § 83-5-701. Purpose; relation to other laws; applicability.

(1) The purpose of this article is to:

(a) Provide the Commissioner of Insurance a summary of an insurer or insurance group's corporate governance structure, policies and practices to permit the commissioner to gain and maintain an understanding of the insurer's corporate governance framework.

(b) Outline the requirements for completing a corporate governance annual disclosure with the Commissioner of Insurance.

(c) Provide for the confidential treatment of the corporate governance annual disclosure and related information that will contain confidential and sensitive information related to an insurer or insurance group's internal operations and proprietary and trade secret information which, if made public, could potentially cause the insurer or insurance group competitive harm or disadvantage.

(2) Nothing in this article shall be construed to prescribe or impose corporate governance standards and internal procedures beyond that which is required under applicable state corporate law. Notwithstanding the foregoing, nothing in this article shall be construed to limit the commissioner's authority, or the rights or obligations of third parties, under Section 83-5-201.

(3) The requirements of this article shall apply to all insurers domiciled in this state.

**HISTORY: Laws, 2019, ch. 343, § 1, eff from and after January 1, 2020.**

**Editor's Notes —** Laws of 2019, ch. 343, § 10, effective January 1, 2020, provides: "SECTION 10. This act shall take effect and be in force from and after January 1, 2020. The first filing of the CGAD shall be in 2020."

## § 83-5-703. Definitions.

As used in this article, unless the context requires otherwise:

(a) "Commissioner" means the Commissioner of Insurance of the State of Mississippi.

(b) "Corporate Governance Annual Disclosure (CGAD)" means a confidential report filed by the insurer or insurance group made in accordance with the requirements of this article.

(c) "Insurance group" means those insurers and affiliates included within an insurance holding company system as defined in Section 83-6-1 et seq.

(d) "Insurer" shall have the same meaning as set forth in Section 83-6-1(e), except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(e) "NAIC" means the National Association of Insurance Commissioners.

(f) "ORSA Summary Report" means the report filed in accordance with Section 83-85-1 et seq.

**HISTORY: Laws, 2019, ch. 343, § 2, eff from and after January 1, 2020.**

**Editor's Notes —** Laws of 2019, ch. 343, § 10, effective January 1, 2020, provides: "SECTION 10. This act shall take effect and be in force from and after January 1, 2020. The first filing of the CGAD shall be in 2020."

## § 83-5-705. Disclosure requirement; permissible levels of reporting.

(1) An insurer, or the insurance group of which the insurer is a member, shall, no later than June 1 of each calendar year, submit to the commissioner a Corporate Governance Annual Disclosure (CGAD) that contains the information described in Section 83-5-709(2). Notwithstanding any request from the commissioner made pursuant to subsection (3) of this section, if the insurer is a member of an insurance group, the insurer shall submit the report required by this section to the commissioner of the lead state for the insurance group, in accordance with the laws of the lead state, as determined by the procedures outlined in the most recent Financial Analysis Handbook adopted by the NAIC.

(2) The CGAD must include a signature of the insurer or insurance group's chief executive officer or corporate secretary attesting to the best of that individual's belief and knowledge that the insurer has implemented the corporate governance practices and that a copy of the disclosure has been provided to the insurer's board of directors or the appropriate committee thereof.

(3) An insurer not required to submit a CGAD under this section shall do so upon the commissioner's request.

(4) For purposes of completing the CGAD, the insurer or insurance group may provide information regarding corporate governance at the ultimate controlling parent level, an intermediate holding company level and/or the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance. The insurer or insurance group is encouraged to make the CGAD disclosures at the level at which the insurer's or insurance group's risk appetite is determined, or at which the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which the supervision of those factors are coordinated and exercised, or the level at which legal liability for failure of general corporate governance duties would be placed. If the insurer or insurance group determines the level of reporting based on these criteria, it shall indicate which of the three (3) criteria was used to determine the level of reporting and explain any subsequent changes in the level of reporting.

(5) The review of the CGAD and any additional requests for information shall be made through the lead state as determined by the procedures within the most recent Financial Analysis Handbook referenced in subsection (1) of this section.

(6) Insurers providing information substantially similar to the information required by this article in other documents provided to the commissioner, including proxy statements filed in conjunction with Form B requirements, or other state or federal filings provided to this department shall not be required to duplicate that information in the CGAD, but shall only be required to cross reference the document in which the information is included.

**HISTORY: Laws, 2019, ch. 343, § 3, eff from and after January 1, 2020.**

**Editor's Note —** Laws of 2019, ch. 343, § 10, effective January 1, 2020, provides: "SECTION 10. This act shall take effect and be in force from and after January 1, 2020. The first filing of the CGAD shall be in 2020."

## § 83-5-707. Promulgation of rules, regulations and orders.

The commissioner may, upon notice and opportunity for all interested persons to be heard, issue such rules, regulations and orders as shall be necessary to carry out the provisions of this article.

**HISTORY: Laws, 2019, ch. 343, § 4, eff from and after January 1, 2020.**

**Editor's Notes —** Laws of 2019, ch. 343, § 10, effective January 1, 2020, provides: "SECTION 10. This act shall take effect and be in force from and after January 1, 2020. The first filing of the CGAD shall be in 2020."

## § 83-5-709. Contents of corporate governance annual disclosure

(1) The insurer or insurance group shall have discretion over the responses to the CGAD inquiries, provided the CGAD shall contain the material information necessary to permit the commissioner to gain an understanding of

the insurer's or group's corporate governance structure, policies and practices. The commissioner may request additional information that he or she deems material and necessary to provide the commissioner with a clear understanding of the corporate governance policies, the reporting or information system or controls implementing those policies.

(2) Notwithstanding subsection (1) of this section, the CGAD shall be prepared consistent with the NAIC Corporate Governance Annual Disclosure Model Regulation, as which may be adopted and amended. Documentation and supporting information shall be maintained and made available upon examination or upon request of the commissioner.

**HISTORY: Laws, 2019, ch. 343, § 5, eff from and after January 1, 2020.**

**Editor's Notes —** Laws of 2019, ch. 343, § 10, effective January 1, 2020, provides: "SECTION 10. This act shall take effect and be in force from and after January 1, 2020. The first filing of the CGAD shall be in 2020."

## § 83-5-711. Confidentiality.

(1) Documents, materials or other information including the CGAD, in the possession or control of the Department of Insurance that are obtained by, created by or disclosed to the commissioner or any other person under this article, are recognized by this state as being proprietary and to contain trade secrets. All such documents, materials or other information shall be confidential by law and privileged, shall not be subject to the Mississippi Public Records Act, Section 25-61-1 et seq., shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer. Nothing in this section shall be construed to require written consent of the insurer before the commissioner may share or receive confidential documents, materials or other CGAD-related information pursuant to subsection (3) of this section to assist in the performance of the commissioner's regular duties.

(2) Neither the commissioner nor any person who received documents, materials or other CGAD-related information, through examination or otherwise, while acting under the authority of the commissioner, or with whom such documents, materials or other information are shared pursuant to this article shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to subsection (1) of this section.

(3) In order to assist in the performance of the commissioner's regulatory duties, the commissioner:

(a) May, upon request, share documents, materials or other CGAD-related information including the confidential and privileged documents,

materials or information subject to subsection (1) of this section, including proprietary and trade secret documents and materials with other state, federal and international financial regulatory agencies, including members of any supervisory college as defined in Section 83-6-45(3), with the NAIC, and with third-party consultants pursuant to Section 83-5-713, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the CGAD-related documents, material or other information and has verified in writing the legal authority to maintain confidentiality; and

(b) May receive documents, materials or other CGAD-related information, including otherwise confidential and privileged documents, materials or information, including proprietary and trade-secret information or documents, from regulatory officials of other state, federal and international financial regulatory agencies, including members of any supervisory college as defined in Section 83-6-45(3) and from the NAIC, and shall maintain as confidential or privileged any documents, materials or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information.

(4) The sharing of information and documents by the commissioner pursuant to this article shall not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution and enforcement of the provisions of this article.

(5) No waiver of any applicable privilege or claim of confidentiality in the documents, proprietary and trade-secret materials or other CGAD-related information shall occur as a result of disclosure of such CGAD-related information or documents to the commissioner under this section or as a result of sharing as authorized in this article.

**HISTORY: Laws, 2019, ch. 343, § 6, eff from and after January 1, 2020.**

**Editor's Notes —** Laws of 2019, ch. 343, § 10, effective January 1, 2020, provides: "SECTION 10. This act shall take effect and be in force from and after January 1, 2020. The first filing of the CGAD shall be in 2020."

## § 83-5-713. NAIC and third-party consultants.

(1) The commissioner may retain, at the insurer's expense, third-party consultants, including attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the CGAD and related information or the insurer's compliance with this article.

(2) Any persons retained under subsection (1) of this section shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

(3) The NAIC and third-party consultants shall be subject to the same confidentiality standards and requirements as the commissioner.

(4) As part of the retention process, a third-party consultant shall verify to the commissioner, with notice to the insurer, that it is free of a conflict of interest and that it has internal procedures in place to monitor compliance with a conflict and to comply with the confidentiality standards and requirements of this article.

(5) A written agreement with the NAIC and/or a third-party consultant governing the sharing and use of information provided pursuant to this article shall contain the following provisions and expressly require the written consent of the insurer prior to making public information provided under this article:

(a) Specific procedures and protocols for maintaining the confidentiality and security of CGAD-related information shared with the NAIC or a third-party consultant pursuant to this article;

(b) Procedures and protocols for sharing by the NAIC only with other state regulators from states in which the insurance group has domiciled insurers. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the CGAD-related documents, materials or other information and has verified in writing the legal authority to maintain confidentiality;

(c) A provision specifying that ownership of the CGAD-related information shared with the NAIC or a third-party consultant remains with the Department of Insurance and the NAIC's or third-party consultant's use of the information is subject to the direction of the commissioner;

(d) A provision that prohibits the NAIC or a third-party consultant from storing the information shared pursuant to this article in a permanent database after the underlying analysis is completed;

(e) A provision requiring the NAIC or third-party consultant to provide prompt notice to the commissioner and to the insurer or insurance group regarding any subpoena, request for disclosure, or request for production of the insurer's CGAD-related information; and

(f) A requirement that the NAIC or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the NAIC or a third-party consultant may be required to disclose confidential information about the insurer shared with the NAIC or a third-party consultant pursuant to this article.

**HISTORY: Laws, 2019, ch. 343, § 7, eff from and after January 1, 2020.**

**Editor's Notes —** Laws of 2019, ch. 343, § 10, effective January 1, 2020, provides: "SECTION 10. This act shall take effect and be in force from and after January 1, 2020. The first filing of the CGAD shall be in 2020."

## § 83-5-715. Penalties for failure to file.

Any insurer failing, without just cause, to timely file the CGAD as required in this article shall be required, after notice and hearing, to pay a penalty of One Hundred Dollars ($100.00) for each day's delay, to be recovered

by the commissioner and the penalty so recovered shall be paid into the State General Fund. The maximum penalty under this section is Ten Thousand Dollars ($10,000.00). The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

**HISTORY: Laws, 2019, ch. 343, § 8, eff from and after January 1, 2020.**

**Editor's Note** — Laws of 2019, ch. 343, § 10, effective January 1, 2020, provides: "SECTION 10. This act shall take effect and be in force from and after January 1, 2020. The first filing of the CGAD shall be in 2020."

## § 83-5-717. Severability.

If any provision of this article, other than Section 83-5-711, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect the provisions or applications of this article which can be given effect without the invalid provision or application, and to that end the provisions of this article, with the exception of Section 83-5-711, are severable.

**HISTORY: Laws, 2019, ch. 343, § 9, eff from and after January 1, 2020.**

**Editor's Note** — Laws of 2019, ch. 343, § 10, effective January 1, 2020, provides: "SECTION 10. This act shall take effect and be in force from and after January 1, 2020. The first filing of the CGAD shall be in 2020.'

# ARTICLE 11.

# INSURANCE DATA SECURITY LAW

Sec.

## § 83-5-801. Short title.

This article shall be known and may be cited as the "Insurance Data Security Law."

**HISTORY: Laws, 2019, ch. 448, § 1, eff from and after July 1, 2019.**

## § 83-5-803. Article establishes exclusive state standards for data security, investigation of cybersecurity event, and notification to Commissioner of Insurance.

(1) Notwithstanding any other provision of law, this article establishes the exclusive state standards applicable to licensees for data security, the investigation of a cybersecurity event as defined in Section 83-5-805, and notification to the Commissioner of Insurance.

(2) This article may not be construed to create or imply a private cause of action for violation of its provisions nor may it be construed to curtail a private cause of action which would otherwise exist in the absence of this article.

**HISTORY: Laws, 2019, ch. 448, § 2, eff from and after July 1, 2019.**

## § 83-5-805. Definitions.

As used in this article, the following terms shall have the following meanings:

(a) "Authorized individual" means an individual known to and screened by the licensee and determined to be necessary and appropriate to have access to the nonpublic information held by the licensee and its information systems.

(b) "Commissioner" means the Commissioner of Insurance.

(c) "Consumer" means an individual, including, but not limited to, applicants, policyholders, insureds, beneficiaries, claimants and certificate holders, who is a resident of this state and whose nonpublic information is in a licensee's possession, custody or control.

(d) "Cybersecurity event" means an event resulting in unauthorized access to, disruption or misuse of, an information system or nonpublic information stored on such information system. The term "cybersecurity event" does not include the unauthorized acquisition of encrypted nonpublic information if the encryption, process or key is not also acquired, released or used without authorization. "Cybersecurity event" does not include an event with regard to which the licensee has determined that the nonpublic information accessed by an unauthorized person has not been used or released and has been returned or destroyed.

(e) "Department" means the Mississippi Insurance Department.

(f) "Encrypted" means the transformation of data into a form which results in a low probability of assigning meaning without the use of a protective process or key.

(g) "Information security program" means the administrative, technical and physical safeguards that a licensee uses to access, collect, distribute, process, protect, store, use, transmit, dispose of or otherwise handle nonpublic information.

(h) "Information system" means a discrete set of electronic information resources organized for the collection, processing, maintenance, use, sharing, dissemination or disposition of electronic nonpublic information, as well as any specialized system such as industrial/process controls systems, telephone switching and private branch exchange systems, and environmental control systems.

(i) "Licensee" means any person licensed, authorized to operate, or registered, or required to be licensed, authorized or registered pursuant to the insurance laws of this state, but shall not include a purchasing group or a risk-retention group chartered and licensed in a state other than this state or a person who is acting as an assuming insurer that is domiciled in another state or jurisdiction.

(j) "Multi-factor authentication" means authentication through verification of at least two (2) of the following types of authentication factors:

(i) Knowledge factors, such as a password;

(ii) Possession factors, such as a token or text message on a mobile phone; or

(iii) Inherence factors, such as a biometric characteristic.

(k) "Nonpublic information" means electronic information that is not publicly available information and is:

(i) Any information concerning a consumer which because of name, number, personal mark or other identifier can be used to identify such consumer, in combination with any one or more of the following data elements:

1. Social security number;

2. Driver's license number or nondriver identification card number;

3. Financial account number, credit or debit card number;

4. Any security code, access code or password that would permit access to a consumer's financial account; or

5. Biometric records;

(ii) Any information or data, except age or gender, in any form or medium created by or derived from a health care provider or a consumer, that can be used to identify a particular consumer, and that relates to:

1. The past, present or future physical, mental or behavioral health or condition of any consumer or a member of the consumer's family;

2. The provision of health care to any consumer; or

3. Payment for the provision of health care to any consumer.

(*l*) "Person" means any individual or any nongovernmental entity, including, but not limited to, any nongovernmental partnership, corporation, branch, agency or association.

(m) "Publicly available information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the

general public from: federal, state or local government records; widely distributed media; or disclosures to the general public that are required to be made by federal, state or local law. For the purposes of this definition, a licensee has a reasonable basis to believe that information is lawfully made available to the general public if the licensee has taken steps to determine:

(i) That the information is of the type that is available to the general public; and

(ii) Whether a consumer can direct that the information not be made available to the general public and, if so, that such consumer has not done so.

(n) "Risk assessment" means the risk assessment that each licensee is required to conduct under Section 83-5-807(3).

(o) "State" means the State of Mississippi.

(p) "Third-party service provider" means a person, not otherwise defined as a licensee, who contracts with a licensee to maintain, process, store or otherwise is permitted access to nonpublic information through its provision of services to the licensee.

**HISTORY: Laws, 2019, ch. 448, § 3, eff from and after July 1, 2019.**

## § 83-5-807. Development, implementation and maintenance of information security program.

(1) Commensurate with the size and complexity of the licensee, the nature and scope of the licensee's activities, including its use of third-party service providers, and the sensitivity of the nonpublic information used by the licensee or in the licensee's possession, custody or control, each licensee shall develop, implement, and maintain a comprehensive written information security program based on the licensee's risk assessment and that contains administrative, technical and physical safeguards for the protection of nonpublic information and the licensee's information system.

(2) A licensee's information security program shall be designed to:

(a) Protect the security and confidentiality of nonpublic information and the security of the information system;

(b) Protect against any threats or hazards to the security or integrity of nonpublic information and the information system;

(c) Protect against unauthorized access to or use of nonpublic information, and minimize the likelihood of harm to any consumer; and

(d) Define and periodically reevaluate a schedule for retention of nonpublic information and a mechanism for its destruction when no longer needed.

(3) The licensee shall:

(a) Designate one or more employees, an affiliate, or an outside vendor designated to act on behalf of the licensee who is responsible for the information security program;

(b) Identify reasonably foreseeable internal or external threats that could result in unauthorized access, transmission, disclosure, misuse, al-

teration or destruction of nonpublic information, including the security of information systems and nonpublic information that are accessible to, or held by, third-party service providers;

(c) Assess the likelihood and potential damage of these threats, taking into consideration the sensitivity of the nonpublic information;

(d) Assess the sufficiency of policies, procedures, information systems and other safeguards in place to manage these threats, including consideration of threats in each relevant area of the licensee's operations, including:

(i) Employee training and management;

(ii) Information systems, including network and software design, as well as information classification, governance, processing, storage, transmission and disposal; and

(iii) Detecting, preventing and responding to attacks, intrusions or other systems failures; and

(e) Implement information safeguards to manage the threats identified in its ongoing assessment, and no less than annually, assess the effectiveness of the safeguards' key controls, systems and procedures.

(4) Based on its risk assessment, the licensee shall:

(a) Design its information security program to mitigate the identified risks, commensurate with the size and complexity of the licensee, the nature and scope of the licensee's activities, including its use of third-party service providers, and the sensitivity of the nonpublic information used by the licensee or in the licensee's possession, custody or control.

(b) Determine which security measures listed below are appropriate and implement such security measures.

(i) Place access controls on information systems, including controls to authenticate and permit access only to authorized individuals to protect against the unauthorized acquisition of nonpublic information;

(ii) Identify and manage the data, personnel, devices, systems and facilities that enable the organization to achieve business purposes in accordance with their relative importance to business objectives and the organization's risk strategy;

(iii) Restrict physical access to nonpublic information, only to authorized individuals;

(iv) Protect by encryption or other appropriate means, all nonpublic information while being transmitted over an external network and all nonpublic information stored on a laptop computer or other portable computing or storage device or media;

(v) Adopt secure development practices for in-house developed applications utilized by the licensee;

(vi) Modify the information system in accordance with the licensee's information security program;

(vii) Utilize effective controls, which may include multi-factor authentication procedures for employees accessing nonpublic information;

(viii) Regularly test and monitor systems and procedures to detect actual and attempted attacks on, or intrusions into, information systems;

(ix) Include audit trails within the information security program designed to detect and respond to cybersecurity events and designed to reconstruct material financial transactions sufficient to support normal operations and obligations of the licensee;

(x) Implement measures to protect against destruction, loss, or damage of nonpublic information due to environmental hazards, such as fire and water damage or other catastrophes or technological failures; and

(xi) Develop, implement, and maintain procedures for the secure disposal of nonpublic information in any format.

(c) Include cybersecurity risks in the licensee's enterprise risk management process.

(d) Stay informed regarding emerging threats or vulnerabilities and utilize reasonable security measures when sharing information relative to the character of the sharing and the type of information shared.

(e) Provide its personnel with cybersecurity awareness training that is updated as necessary to reflect risks identified by the licensee in the risk assessment.

(5) If the licensee has a board of directors, the board or an appropriate committee of the board shall, at a minimum:

(a) Require the licensee's executive management or its delegates to develop, implement and maintain the licensee's information security program;

(b) Require the licensee's executive management or its delegates to report in writing at least annually, the following information:

(i) The overall status of the information security program and the licensee's compliance with this article; and

(ii) Material matters related to the information security program, addressing issues such as risk assessment, risk management and control decisions, third-party service provider arrangements, results of testing, cybersecurity events or violations and management's responses thereto, and recommendations for changes in the information security program;

(c) If executive management delegates any of its responsibilities under this section, it shall oversee the development, implementation and maintenance of the licensee's information security program prepared by the delegate(s) and shall receive a report from the delegate(s) complying with the requirements of the report to the board of directors above.

(6)(a) A licensee shall exercise due diligence in selecting its third-party service provider; and

(b) A licensee shall require a third-party service provider to implement appropriate administrative, technical and physical measures to protect and secure the information systems and nonpublic information that are accessible to, or held by, the third-party service provider.

(7) The licensee shall monitor, evaluate and adjust, as appropriate, the information security program consistent with any relevant changes in technology, the sensitivity of its nonpublic information, internal or external threats to information, and the licensee's own changing business arrangements, such

as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements and changes to information systems.

(8)(a) As part of its information security program, each licensee shall establish a written incident response plan designed to promptly respond to, and recover from, any cybersecurity event that compromises the confidentiality, integrity or availability of nonpublic information in its possession, the licensee's information systems, or the continuing functionality of any aspect of the licensee's business or operations.

(b) Such incident response plan shall address the following areas:

(i) The internal process for responding to a cybersecurity event;

(ii) The goals of the incident response plan;

(iii) The definition of clear roles, responsibilities and levels of decision-making authority;

(iv) External and internal communications and information sharing;

(v) Identification of requirements for the remediation of any identified weaknesses in information systems and associated controls;

(vi) Documentation and reporting regarding cybersecurity events and related incident response activities; and

(vii) The evaluation and revision as necessary of the incident response plan following a cybersecurity event.

(9) Annually, each insurer domiciled in this state shall submit to the commissioner a written statement by February 15, certifying that the insurer is in compliance with the requirements set forth in this section. Each insurer shall maintain for examination by the department all records, schedules and data supporting this certificate for a period of five (5) years. To the extent an insurer has identified areas, systems or processes that require material improvement, updating or redesign, the insurer shall document the identification and the remedial efforts planned and underway to address such areas, systems or processes. Such documentation must be available for inspection by the commissioner.

**HISTORY: Laws, 2019, ch. 448, § 4, eff from and after July 1, 2019.**

## § 83-5-809. Investigation of cybersecurity event.

(1) If the licensee learns that a cybersecurity event has or may have occurred, then the licensee, or an outside vendor and/or service provider designated to act on behalf of the licensee, shall conduct a prompt investigation.

(2) During the investigation, the licensee, or an outside vendor and/or service provider designated to act on behalf of the licensee, shall, at a minimum, determine as much of the following information as possible:

(a) Determine whether a cybersecurity event has occurred;

(b) Assess the nature and scope of the cybersecurity event;

(c) Identify any nonpublic information that may have been involved in the cybersecurity event; and

(d) Perform or oversee reasonable measures to restore the security of the information systems compromised in the cybersecurity event in order to

prevent further unauthorized acquisition, release or use of nonpublic information in the licensee's possession, custody or control.

(3) If the licensee learns that a cybersecurity event has or may have occurred in a system maintained by a third-party service provider, the licensee will complete the steps listed in subsection (2) of this section or confirm and document that the third-party service provider has completed those steps.

(4) The licensee shall maintain records concerning all cybersecurity events for a period of at least five (5) years from the date of the cybersecurity event and shall produce those records upon demand of the commissioner.

**HISTORY: Laws, 2019, ch. 448, § 5, eff from and after July 1, 2019.**

## § 83-5-811. Notification of cybersecurity event involving nonpublic information; information to be provided; investigation of cybersecurity event in system maintained by third-party service provider.

(1) Each licensee shall notify the commissioner as promptly as possible but in no event later than three (3) business days from a determination that a cybersecurity event involving nonpublic information that is in the possession of a licensee has occurred when either of the following criteria has been met:

(a) This state is the licensee's state of domicile, in the case of an insurer, or this state is the licensee's home state, in the case of a producer, as those terms are defined in Section 83-17-53, and the cybersecurity event has a reasonable likelihood of materially harming a consumer residing in this state or reasonable likelihood of materially harming any material part of the normal operation(s) of the licensee; or

(b) The licensee reasonably believes that the nonpublic information involved is of two hundred fifty (250) or more consumers residing in this state and that is either of the following:

(i) A cybersecurity event impacting the licensee of which notice is required to be provided to any government body, self-regulatory agency or any other supervisory body pursuant to any state or federal law; or

(ii) A cybersecurity event that has a reasonable likelihood of materially harming:

1. Any consumer residing in this state; or
2. Any material part of the normal operation(s) of the licensee.

(2) The licensee shall provide as much of the following information as possible. The licensee shall provide the information in electronic form as directed by the commissioner. The licensee shall have a continuing obligation to update and supplement initial and subsequent notifications to the commissioner regarding material changes to previously provided information relating to the cybersecurity event.

(a) Date of the cybersecurity event;

(b) Description of how the information was exposed, lost, stolen or breached, including the specific roles and responsibilities of third-party service providers, if any;

(c) How the cybersecurity event was discovered;

(d) Whether any lost, stolen, or breached information has been recovered and if so, how this was done;

(e) The identity of the source of the cybersecurity event;

(f) Whether the licensee has filed a police report or has notified any regulatory, government or law enforcement agencies and, if so, when such notification was provided;

(g) Description of the specific types of information acquired without authorization. Specific types of information means particular data elements including, for example, types of medical information, types of financial information or types of information allowing identification of the consumer;

(h) The period during which the information system was compromised by the cybersecurity event;

(i) The number of total consumers in this state affected by the cybersecurity event. The licensee shall provide the best estimate in the initial report to the commissioner and update this estimate with each subsequent report to the commissioner pursuant to this section;

(j) The results of any internal review identifying a lapse in either automated controls or internal procedures, or confirming that all automated controls or internal procedures were followed;

(k) Description of efforts being undertaken to remediate the situation which permitted the cybersecurity event to occur;

(*l*) A copy of the licensee's privacy policy and a statement outlining the steps the licensee will take to investigate and notify consumers affected by the cybersecurity event; and

(m) Name of a contact person who is both familiar with the cybersecurity event and authorized to act for the licensee.

(3) Licensee shall comply with Section 75-24-29, as applicable, and provide a copy of the notice sent to consumers under that statute to the commissioner, when a licensee is required to notify the commissioner under subsection (1) of this section.

(4)(a) In the case of a cybersecurity event in a system maintained by a third-party service provider, of which the licensee has become aware, the licensee shall treat such event as it would under subsection (1) of this section unless the third-party service provider provides the notice required under subsection (1) of this section to the commissioner.

(b) The computation of licensee's deadlines shall begin on the day after the third-party service provider notifies the licensee of the cybersecurity event or the licensee otherwise has actual knowledge of the cybersecurity event, whichever is sooner.

(c) Nothing in this article shall prevent or abrogate an agreement between a licensee and another licensee, a third-party service provider or any other party to fulfill any of the investigation requirements imposed under Section 83-5-809 or notice requirements imposed under this section.

(5)(a)(i) In the case of a cybersecurity event involving nonpublic information that is used by the licensee who is acting as an assuming insurer or

in the possession, custody or control of a licensee who is acting as an assuming insurer and that does not have a direct contractual relationship with the affected consumers, the assuming insurer shall notify its affected ceding insurers and the commissioner of its state of domicile within three (3) business days of making the determination that a cybersecurity event has occurred.

(ii) The ceding insurers that have a direct contractual relationship with affected consumers shall fulfill the consumer notification requirements imposed under Section 75-24-29 and any other notification requirements relating to a cybersecurity event imposed under this section.

(b)(i) In the case of a cybersecurity event involving nonpublic information that is in the possession, custody or control of a third-party service provider of a licensee who is an assuming insurer, the assuming insurer shall notify its affected ceding insurers and the commissioner of its state of domicile within three (3) business days of receiving notice from its third-party service provider that a cybersecurity event has occurred.

(ii) The ceding insurers that have a direct contractual relationship with affected consumers shall fulfill the consumer notification requirements imposed under Section 75-24-29 and any other notification requirements relating to a cybersecurity event imposed under this section.

(c) Any licensee acting as assuming insurer shall have no other notice obligations relating to a cybersecurity event or other data breach under this section or any other law of this state.

(6) In the case of a cybersecurity event involving nonpublic information that is in the possession, custody or control of a licensee who is an insurer or its third-party service provider for which a consumer accessed the insurer's services through an independent insurance producer, and for which consumer notice is required under Section 75-24-29, the insurer shall notify the producers of record of all affected consumers of the cybersecurity event no later than the time at which notice is provided to the affected consumers. The insurer is excused from this obligation for any producers who are not authorized by law or contract to sell, solicit or negotiate on behalf of the insurer, and in those instances in which the insurer does not have the current producer of record information for any individual consumer.

**HISTORY: Laws, 2019, ch. 448, § 6, eff from and after July 1, 2019.**

## § 83-5-813. Power of commissioner to investigate licensee and enforce provisions of this article.

(1) The commissioner shall have power to examine and investigate into the affairs of any licensee to determine whether the licensee has been or is engaged in any conduct in violation of this article. This power is in addition to the powers which the commissioner has under Section 83-5-201 et seq. Any such investigation or examination shall be conducted pursuant to Section 83-5-201 et seq.

(2) Whenever the commissioner has reason to believe that a licensee has been or is engaged in conduct in this state which violates this article, the

commissioner may take action that is necessary or appropriate to enforce the provisions of this article.

**HISTORY: Laws, 2019, ch. 448, § 7, eff from and after July 1, 2019.**

## § 83-5-815. Protection of documents, materials and other information.

(1) Any documents, materials or other information in the control or possession of the department that are furnished by a licensee or an employee or agent thereof acting on behalf of a licensee pursuant to Section 83-5-807(9), Section 83-5-811(2)(b), (c), (d), (e), (h), (j) and (k) or that are obtained by the commissioner in an investigation or examination pursuant to Section 83-5-813, shall be confidential by law and privileged, shall not be subject to the Mississippi Public Records Act, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's duties. The commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the licensee.

(2) Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to subsection (1) of this section.

(3) In order to assist in the performance of the commissioner's duties under this article, the commissioner:

(a) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subsection (1) of this section, with other state, federal and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material or other information;

(b) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners, its affiliates or subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information;

(c) May share documents, materials or other information subject to subsection (1) of this section with a third-party consultant or vendor provided the consultant agrees in writing to maintain the confidentiality and privileged status of the document, material or other information; and

(d) May enter into agreements governing sharing and use of information consistent with this subsection (3).

(4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (3) of this section.

(5) Nothing in this article shall prohibit the commissioner from releasing final, adjudicated actions that are open to public inspection pursuant to the Mississippi Public Records Act, to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.

(6) Documents, materials or other information in the possession or control of the National Association of Insurance Commissioners or a third-party consultant or vendor pursuant to this article shall be confidential by law and privileged, shall not be subject to the Mississippi Public Records Act, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

**HISTORY: Laws, 2019, ch. 448, § 8, eff from and after July 1, 2019.**

## § 83-5-817. Exemptions.

(1) The following exceptions shall apply to this article:

(a) A licensee meeting any of the following criteria is exempt from Sections 83-5-807, 83-5-809(3) and 83-5-811(4)(a) and (b):

(i) Fewer than fifty (50) employees, excluding any independent contractors;

(ii) Less than Five Million Dollars ($5,000,000.00) in gross annual revenue;

(iii) Less than Ten Million Dollars ($10,000,000.00) in year-end total assets; or

(iv) Insurance producers and adjusters.

(b) A licensee subject to Public Law 104-191, 110 Stat. 1936, enacted August 21, 1996, (Health Insurance Portability and Accountability Act) that has established and maintains an information security program pursuant to such statutes, rules, regulations, procedures or guidelines established thereunder, will be considered to meet the requirements of Section 83–5–807, provided that the licensee is compliant with, and submits a written statement certifying its compliance with, the same.

(c) An employee, agent, representative or designee of a licensee, who is also a licensee, is exempt from Section 83-5-807 and need not develop its own information security program to the extent that the employee, agent, representative or designee is covered by the information security program of the other licensee.

(d) A licensee affiliated with a depository institution that maintains an information security program in compliance with the *Interagency Guidelines Establishing Standards for Safeguarding Customer Information* as set forth

pursuant to Sections 501 and 505 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 and 6805) shall be considered to meet the requirements of Section 83-5-807, provided that the licensee produces, upon request, documentation satisfactory to the commissioner that independently validates the affiliated depository institution's adoption of an information security program that satisfies the Interagency Guidelines.

(2) In the event that a licensee ceases to qualify for an exception, such licensee shall have one hundred eighty (180) days to comply with this article.

**HISTORY: Laws, 2019, ch. 448, § 9, eff from and after July 1, 2019.**

## § 83-5-819. Penalties for violation of article.

In the case of a violation of this article, a licensee may be penalized in accordance with Section 83-5-85.

**HISTORY: Laws, 2019, ch. 448, § 10, eff from and after July 1, 2019.**

## § 83-5-821. Regulations.

The commissioner may issue such regulations as shall be necessary to carry out the provisions of this article.

**HISTORY: Laws, 2019, ch. 448, § 11, eff from and after July 1, 2019.**

## § 83-5-823. Severability.

If any provisions of this article or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the article and the application of such provision to other persons or circumstances shall not be affected thereby.

**HISTORY: Laws, 2019, ch. 448, § 12, eff from and after July 1, 2019.**

## § 83-5-825. Implementation of Section 83-5-807 and Section 83-5-807(6).

Licensees shall have one (1) year from July 1, 2019, to implement Section 83-5-807 and two (2) years from July 1, 2019 to implement Section 83-5-807(6).

**HISTORY: Laws, 2019, ch. 448, § 13, eff from and after July 1, 2019.**

# CHAPTER 6.

# REGISTRATION AND EXAMINATION OF INSURERS

Sec.

Sec.



## § 83-6-1. Definitions.

As used in this chapter the following terms have the respective meanings herein set forth unless the context shall require otherwise:

(a) An "affiliate of" or person "affiliated" with a specific person means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(b) "Commissioner" means the Commissioner of Insurance.

(c) "Control" (including the terms "controlling," "controlled by" and "under common control with") means the possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services or otherwise, unless the power is the result of an official position with or corporate office held by the person. "Control" shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote or holds proxies representing ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided in Section 83-6-17 that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(d) An "insurance holding company system" consists of two (2) or more affiliated persons, one or more of which is an insurer.

(e) "Insurer" means only those companies subject to the jurisdiction of the commissioner as provided in Section 83-5-1; however, burial associations regulated pursuant to Chapter 37, Title 83, Mississippi Code of 1972, are excluded from this definition.

(f) "Person" means an individual, corporation, partnership, association, joint-stock company, trust, unincorporated organization, any similar entity

or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker's function.

(g) A "security holder" of a specified person means one who owns any security of such person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing.

(h) "Subsidiary" of a specified person means an affiliate controlled by a person, directly or indirectly, through one or more intermediaries.

(i) The term "voting security" includes any security convertible into or evidencing a right to acquire a voting security.

(j) "Enterprise risk" shall mean any activity, circumstance, event or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer's Risk-Based Capital to fall into company action level as provided in Section 83-5-405 or would cause the insurer to be in hazardous financial condition as provided in Part 1, Chapter 39, Title 19 of the Mississippi Administrative Code.

(k) "Group-wide supervisor" means the regulatory official authorized to engage in conducting and coordinating group-wide supervision activities who is determined or acknowledged by the commissioner under Section 83-6-47 to have sufficient significant contacts with the internationally active insurance group.

(*l*) "Internationally active insurance group" means an insurance holding company system that:

(i) Includes an insurer registered under Section 83-6-3; and

(ii) Meets the following criteria:

1. Premiums written in at least three (3) countries;

2. The percentage of gross premiums written outside the United States is at least ten percent (10%) of the insurance holding company system's total gross written premiums; and

3. Based on a three-year rolling average, the total assets of the insurance holding company system are at least Fifty Billion ($50,000,000,000.00) or the total gross written premiums of the insurance holding company system are at least Ten Billion Dollars ($10,000,000,000.00).

**HISTORY: Laws, 1974, ch. 366, § 1; Laws, 1992, ch. 573, § 1; Laws, 1997, ch. 410, § 8; Laws, 2013, ch. 416, § 8; Laws, 2017, ch. 306, § 1, eff from and after passage (approved Mar. 6, 2017).**

**Editor's Notes —** Laws of 2013, ch. 416, § 16, provides:

"SECTION 16. This act shall take effect and be in force from and after July 1, 2014, except for the provisions contained in Sections 3 through 14, which shall take effect and be in force from and after July 1, 2013."

Laws of 2017, ch. 306, § 22, effective March 6, 2017, provides:

"SECTION 22. This act shall take effect and be in force from and after its passage,

except Sections 11 through 21 of this act [codified as Sections 83-85-1 through 83-85-21] shall take effect and be in force from and after January 1, 2018. The first filing of the ORSA Summary Report shall be in 2018 pursuant to Section 16 of this act [codified as Section 83-85-11]."

**Amendment Notes —** The 2013 amendment inserted "Mississippi Code of 1972" near the end of (e); added (j); and made a minor stylistic change.

The 2017 amendment, effective March 6, 2017, substituted "provided in Part 1, Chapter 39, Title 19 of the Mississippi Administrative Code" for "provided in Section 83-5-411" at the end of (j); and added (k) and ( *l*).

**Cross References —** Part 1, Chapter 39, Title 19 of the Mississippi Administrative Code, see CMSR 19-001-39, Rules 39.01 through 39.08.

## § 83-6-5. Registration statement; filing, form and contents; annual enterprise risk report.

(1) Every insurer subject to registration is required to file a registration statement on a form provided by the commissioner which shall contain current information setting forth:

(a) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;

(b) The identity of every member of the insurance holding company system;

(c) The following agreements in force, relationships subsisting and transactions currently outstanding between such insurer and its affiliates:

(i) Loans, other investments or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(ii) Purchases, sales or exchanges of assets;

(iii) Transactions not in the ordinary course of business;

(iv) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) All management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles;

(vi) Reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company;

(vii) Dividends and other distributions to shareholders; and

(viii) Consolidated tax allocation agreements.

(d) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system;

(e) If requested by the commissioner, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include, but are not limited to, annual audited financial statements filed with the United States Securities and Exchange Commission (SEC) pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended. An insurer

required to file financial statements pursuant to this paragraph may satisfy the request by providing the commissioner with the most recently filed parent corporation financial statements that have been filed with the SEC;

(f) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner;

(g) Statements that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures.

(2) All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(3) Subject to Section 83-6-25, each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within fifteen (15) business days following the declaration thereof.

(4) Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, where the information is reasonably necessary to enable the insurer to comply with the provisions of this chapter.

(5) The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

**HISTORY: Laws, 1974, ch. 366, § 2(2); Laws, 2013, ch. 416, § 9, eff from and after July 1, 2013.**

**Editor's Notes —** Laws of 2013, ch. 416, § 16, provides:

"SECTION 16. This act shall take effect and be in force from and after July 1, 2014, except for the provisions contained in Sections 3 through 14, which shall take effect and be in force from and after July 1, 2013."

**Amendment Notes —** The 2013 amendment inserted the (1) designator at the beginning and added (1)(c)(vii), (viii), (1)(d), (e) and (g) and redesignated former (1)(d) as (1)(f); added (2) through (5); and made minor stylistic changes.

## § 83-6-17. Disclaimer of affiliation; effect of filing; disallowance.

Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. A disclaimer of affiliation shall be deemed to have been granted unless the

commissioner, within thirty (30) days following receipt of a complete disclaimer, notifies the filing party that the disclaimer is disallowed. In the event of disallowance, the disclaiming party may request an administrative hearing, which shall be granted. The disclaiming party is relieved of any duty to register or report under this chapter which may arise out of the insurer's relationship with such person if approval of the disclaimer has been granted by the commissioner, until the commissioner disallows such a disclaimer.

**HISTORY: Laws, 1974, ch. 366, § 2(9); Laws, 2013, ch. 416, § 10, eff from and after July 1, 2013.**

**Editor's Notes —** Laws of 2013, ch. 416, § 16, provides:

"SECTION 16. This act shall take effect and be in force from and after July 1, 2014, except for the provisions contained in Sections 3 through 14, which shall take effect and be in force from and after July 1, 2013."

**Amendment Notes —** The 2013 amendment rewrote the section.

## § 83-6-21. Standards for transactions within holding company system; notice to commissioner of certain intended transactions; action by commissioner against violators; stock company permits; dividends and other distributions.

(1) Transactions within a holding company system to which an insurer subject to registration is a party shall be subject to the following standards:

(a) The terms shall be fair and reasonable;

(b) Agreements for cost sharing services and management shall include such provisions as required by rule and regulation issued by the commissioner;

(c) Charges or fees for services performed shall be reasonable;

(d) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;

(e) The books, accounts and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties; and

(f) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) The following transactions involving a domestic insurer and any person in its holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this section, which are subject to any materiality standards contained in paragraphs (a) through (i) of this subsection, shall not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into such transaction at least

thirty (30) days prior thereto, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within such period. The notice for amendments or modifications shall include the reasons for the change and the financial impact on the domestic insurer. Informal notice shall be reported within thirty (30) days after a termination of a previously filed agreement to the commissioner for determination of the type of filing required, if any.

(a) Sales, purchases, exchanges, loans or extension of credit, guarantees or investments provided such transactions are equal to or exceed: (i) with respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; and (ii) with respect to life insurers, three percent (3%) of the insurer's admitted assets; each as of December 31 next preceding:

(b) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes such loans or extension of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of or to make investments in, any affiliate of the insurer making such loans or extensions of credit provided such transactions are equal to or exceed: (i) with respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; and (ii) with respect to life insurers, three percent (3%) of the insurer's admitted assets; each as of December 31 next preceding;

(c) Reinsurance agreements or modifications thereto, including (i) all reinsurance pooling agreements; and (ii) agreements in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, as of December 31 next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer;

(d) All management agreements that would place control of the insurer outside of the insurance holding company system;

(e) All service contracts or cost-sharing arrangements wherein the annual aggregate cost to the insurer would equal or exceed the amounts specified in paragraph (a) of this subsection;

(f) All tax allocation agreements;

(g) Guarantees when made by a domestic insurer; provided, however, that a guarantee which is quantifiable as to amount is not subject to the notice requirements of this paragraph unless it exceeds the lesser of one-half of one percent (.5%) of the insurer's admitted assets or ten percent (10%) of surplus as regards policyholders as of December 31 next preceding. Further, all guarantees which are not quantifiable as to amounts are subject to the notice requirements of this paragraph;

(h) Direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount which, together with its present holdings in such investments, exceeds two and one-half percent (2.5%) of the insurer's surplus as to policyholders. Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to Section 83-6-2, or in nonsubsidiary insurance affiliates that are subject to the provisions of this chapter, are exempt from this requirement; and

(i) Any material transactions, specified by regulation, which the commissioner determines may adversely affect the interests of the insurer's policyholders.

Nothing in this subsection (2) shall be determined to authorize or permit any transactions which, in the case of an insurer not a member of the same insurance holding company system, would be otherwise contrary to law.

(3) A domestic insurer shall not enter into transactions which are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and avoid the review that would occur otherwise. If the commissioner determines that such separate transactions were entered into over any twelve-month period for such purpose, he may exercise his authority under Section 83-6-35.

(4) The commissioner, in reviewing transactions pursuant to subsection (2) of this section, shall consider whether the transactions comply with the standards set forth in subsection (1) of this section and whether they may adversely affect the interests of policyholders.

(5) The commissioner shall be notified within thirty (30) days of any investment of the domestic insurer in any one (1) corporation if the total investment in such corporation by the insurance holding company system exceeds ten percent (10%) of such corporation's voting securities.

(6) Insurance companies within a holding company system shall not sell or exchange their stock among each other unless the companies have obtained stock company permits before conducting such transactions.

(7) Dividends and other Distributions. No domestic insurer shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until thirty (30) days after the commissioner has received notice of the declaration thereof and has not within that period disapproved the payment, or until the commissioner has approved the payment within the thirty-day period. For purposes of this subsection, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve (12) months exceeds the lesser of:

(a) Ten percent (10%) of the insurer's surplus as regards policyholders as of the 31st day of December next preceding; or

(b) The net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the twelve-month period ending the 31st day of December next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward net income from the previous two (2) calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years. Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval, and the declaration shall confer no rights upon shareholders until the commissioner has approved the payment of the dividend or distribution, or the commissioner has not disapproved payment within the thirty-day period referred to above.

**HISTORY: Laws, 1974, ch. 366, § 3(1); Laws, 1992, ch. 573, § 2; Laws, 1998, ch. 323, § 1; Laws, 2013, ch. 416, § 11; Laws, 2017, ch. 306, § 2, eff from and after passage (approved Mar. 6, 2017).**

**Editor's Notes —** Laws of 2013, ch. 416, § 16, provides:

"SECTION 16. This act shall take effect and be in force from and after July 1, 2014, except for the provisions contained in Sections 3 through 14, which shall take effect and be in force from and after July 1, 2013."

Laws of 2017, ch. 306, § 22, effective March 6, 2017, provides:

"SECTION 22. This act shall take effect and be in force from and after its passage, except Sections 11 through 21 of this act [codified as Sections 83-85-1 through 83-85-21] shall take effect and be in force from and after January 1, 2018. The first filing of the ORSA Summary Report shall be in 2018 pursuant to Section 16 of this act [codified as Section 83-85-11]."

**Amendment Notes —** The 2013 amendment in (2), added language beginning "including amendments or modifications" and ending "through (e) of this section" in the first sentence, and added the last two sentences; added "including (i) all reinsurance pooling agreements; and (ii) agreements" following "Reinsurance agreements or modifications thereto" at the beginning of (2)(c); added (2)(f) through (i); and made minor stylistic changes throughout.

The 2017 amendment, effective March 6, 2017, in (1), added (b) and redesignated the remaining paragraphs accordingly; in (2), substituted "contained in paragraphs (a) through (i) of this subsection" for "contained in subsection (1)(a) through (e) of this section," and added the last paragraph; and added (7).

## § 83-6-22. Acquisitions involving insurers not otherwise covered.

(1) **Definitions.** The following definitions shall apply for the purposes of this section only:

(a) "Acquisition" means any agreement, arrangement or activity the consummation of which results in a person acquiring directly or indirectly the control of another person, and includes, but is not limited to, the acquisition of voting securities, the acquisition of assets, bulk reinsurance and mergers.

(b) An "involved insurer" includes an insurer which either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.

(2) **Scope.**

(a) Except as exempted in paragraph (b) of this subsection, this section applies to any acquisition in which there is a change in control of an insurer authorized to do business in this state;

(b) This section shall not apply to the following:

(i) A purchase of securities solely for investment purposes so long as the securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this state. If a purchase of securities results in a presumption of control under Section 83-6-1(c), it is not solely for investment purposes unless the commissioner of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and the disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the commissioner of this state;

(ii) The acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if preacquisition notification is filed with the commissioner in accordance with subsection (3)(a) of this section thirty (30) days prior to the proposed effective date of the acquisition. However, such preacquisition notification is not required for exclusion from this section if the acquisition would otherwise be excluded from this section by any other subparagraph of this paragraph (b);

(iii) The acquisition of already affiliated persons;

(iv) An acquisition if, as an immediate result of the acquisition:

1. In no market would the combined market share of the involved insurers exceed five percent (5%) of the total market;

2. There would be no increase in any market share; or

3. In no market would:

a. The combined market share of the involved insurers exceeds twelve percent (12%) of the total market; and

b. The market share increase by more than two percent (2%) of the total market.

For the purpose of this subsection (2)(b)(iv), a market means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state;

(v) An acquisition for which a preacquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business;

(vi) An acquisition of an insurer whose domiciliary commissioner affirmatively finds that the insurer is in failing condition; there is a lack of feasible alternative to improving such condition; the public benefits of improving the insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition; and the findings are communicated by the domiciliary commissioner to the commissioner of this state.

(3) **Preacquisition notification; waiting period.** An acquisition covered by subsection (2) may be subject to an order pursuant to subsection (5) unless the acquiring person files a preacquisition notification and the waiting period has expired. The acquired person may file a preacquisition notification. The commissioner shall give confidential treatment to information submitted under this subsection in the same manner as provided in this chapter.

(a) The preacquisition notification shall be in such form and contain such information as prescribed by the National Association of Insurance Commissioners (NAIC) relating to those markets which, under subsection (2)(b)(iv) of this section, cause the acquisition not to be exempted from the provisions of this section. The commissioner may require such additional material and information as deemed necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of subsection (4) of this section. The required information may include an opinion of an economist as to the competitive impact of the acquisition in this state accompanied by a summary of the education and experience of such person indicating his or her ability to render an informed opinion.

(b) The waiting period required shall begin on the date of receipt of the commissioner of a preacquisition notification and shall end on the earlier of the thirtieth day after the date of receipt, or termination of the waiting period by the commissioner. Prior to the end of the waiting period, the commissioner on a one-time basis may require the submission of additional needed information relevant to the proposed acquisition, in which event the waiting period shall end on the earlier of the thirtieth day after receipt of the additional information by the commissioner or termination of the waiting period by the commissioner.

(4) **Competitive standard.**

(a) The commissioner may enter an order under subsection (5)(a) of this section with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance in this state or tend to create a monopoly or if the insurer fails to file adequate information in compliance with subsection (3) of this section.

(b) In determining whether a proposed acquisition would violate the competitive standard of paragraph (a) of this subsection, the commissioner shall consider the following:

(i) Any acquisition covered under subsection (2) of this section involving two (2) or more insurers competing in the same market is prima facie evidence of violation of the competitive standards.

1. If the market is highly concentrated and the involved insurers possess the following shares of the market:

| Insurer A | Insurer B |
|---|---|
| 4% | 4% or more |
| 10% | 2% or more |
| 15% | 1% or more |

2. Or, if the market is not highly concentrated and the involved insurers possess the following shares of the market:

| Insurer A | Insurer B |
|---|---|
| 5% | 5% or more |
| 10% | 4% or more |
| 15% | 3% or more |
| 19% | 1% or more |

A highly concentrated market is one in which the share of the four (4) largest insurers is seventy-five percent (75%) or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two (2) insurers are involved, exceeding the total of the two (2) columns in the table is prima facie evidence of violation of the competitive standard in paragraph (a) of this subsection. For the purpose of this item, the insurer with the largest share of the market shall be deemed to be Insurer A.

(ii) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market, from the two (2) largest to the eight (8) largest, has increased by seven percent (7%) or more of the market over a period of time extending from any base year five (5) to ten (10) years prior to the acquisition up to the time of the acquisition. Any acquisition or merger covered under subsection (2) of this section involving two (2) or more insurers competing in the same market is prima facie evidence of violation of the competitive standard in paragraph (a) of this subsection if:

1. There is a significant trend toward increased concentration in the market;

2. One (1) of the insurers involved is one of the insurers in a grouping of large insurers showing the requisite increase in the market share; and

3. Another involved insurer's market is two percent (2%) or more.

(iii) For the purposes of paragraph (b) of this subsection (4):

1. The term "insurer" includes any company or group of companies under common management, ownership or control;

2. The term "market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the NAIC and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in this state, and the relevant geographical market is assumed to be this state;

3. The burden of showing prima facie evidence of violation of the competitive standard rests upon the commissioner.

(iv) Even though an acquisition is not prima facie violative of the competitive standard under paragraph (b)(i) and (ii) of this subsection (4), the commissioner may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is prima facie violative of the competitive standard under paragraph (b)(i) and (ii) of this subsection (4), a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this subparagraph include, but are not limited to, the following: market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry and exit into the market.

(c) An order may not be entered under subsection (5)(a) of this section if:

(i) The acquisition will yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved in any other way, and the public benefits which would arise from such economies exceed the public benefits which would arise from not lessening competition; or

(ii) The acquisition will substantially increase the availability of insurance, and the public benefits of the increase exceed the public benefits which would arise from not lessening competition.

(5) **Orders and penalties.**

(a)(i) If an acquisition violates the standards of this section, the commissioner may enter an order:

1. Requiring an involved insurer to cease and desist from doing business in this state with respect to the line or lines of insurance involved in the violation; or

2. Denying the application of an acquired or acquiring insurer for a license to do business in this state.

(ii) Such an order shall not be entered unless there is a hearing:

1. Notice of the hearing is issued prior to the end of the waiting period and not less than fifteen (15) days prior to the hearing; and

2. The hearing is concluded and the order is issued no later than sixty (60) days after the date of the filing of the preacquisition notification with the commissioner.

Every order shall be accompanied by a written decision of the commissioner setting forth findings of fact and conclusions of law.

(iii) An order pursuant to this paragraph shall not apply if the acquisition is not consummated.

(b) Any person who violates a cease and desist order of the commissioner under paragraph (a) of this subsection and while the order is in effect may, after notice and hearing and upon order of the commissioner, be subject at the discretion of the commissioner to one or more of the following:

(i) A monetary penalty of not more than Ten Thousand Dollars ($10,000.00) for every day of violation; or

(ii) Suspension or revocation of the person's license.

(iii) Any insurer or other person who fails to make any filing required by this section, and who also fails to demonstrate a good faith effort to comply with any filing requirement, shall be subject to a fine of not more than Fifty Thousand Dollars ($50,000.00).

(6) **Inapplicable provisions.** Section 83-6-33(2) and (3) and Section 83-6-39 do not apply to acquisitions covered under this section.

**HISTORY: Laws, 2017, ch. 306, § 4, eff from and after passage (approved Mar. 6, 2017).**

**Editor's Notes —** Laws of 2017, ch. 306, § 22, effective March 6, 2017, provides: "SECTION 22. This act shall take effect and be in force from and after its passage, except Sections 11 through 21 of this act [codified as Sections 83-85-1 through 83-85-21] shall take effect and be in force from and after January 1, 2018. The first filing of the ORSA Summary Report shall be in 2018 pursuant to Section 16 of this act [codified as Section 83-85-11]."

## § 83-6-24. Filing of statement by person making offer, request, etc.; contents of statement; approval by commissioner; exceptions; violations of section; jurisdiction of courts.

(1)(a) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities, or seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to such insurer, a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner hereinafter prescribed.

(b) For the purposes of this section, "a domestic insurer" shall include any person controlling a domestic insurer unless such person as determined by the commissioner is either directly or through its affiliates primarily engaged in business other than the business of insurance. However, such person shall file a preacquisition notification with the commissioner containing the information set forth in this section thirty (30) days prior to the proposed effective date of the acquisition. For the purposes of this section, "person" shall not include any securities broker holding, in the usual and customary brokers function, less than twenty percent (20%) of the voting securities of an insurance company or of any person which controls an insurance company.

(c) For purposes of this section, any controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer, in

any manner, shall file with the commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least thirty (30) days prior to the cessation of control. The commissioner shall determine those instances in which the party(ies) seeking to divest or to acquire a controlling interest in an insurer will be required to file for and obtain approval of the transaction. The information shall remain confidential until the conclusion of the transaction unless the commissioner, in his discretion, determines that confidential treatment will interfere with enforcement of this section. If the statement referred to in paragraph (b) of this subsection is otherwise filed, this paragraph shall not apply.

(d) With respect to a transaction subject to this section, the acquiring person must also file a preacquisition notification with the commissioner, which shall contain the information set forth in Section 83-6-22(3)(a). A failure to file the notification may be subject to penalties specified in Section 83-6-22(5).

(2) The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following information:

(a) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (1) is to be effected (hereinafter called "acquiring party"), and

(i) If such person is an individual, his principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years;

(ii) If such person is not an individual, a report of the nature of its business operations during the past five (5) years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by subparagraph (i).

(b) The source, nature and amount of consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose (including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates), and the identity of persons furnishing such consideration, provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests.

(c) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years of each such acquiring party (or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence), and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement.

(d) Any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

(e) The number of shares of any security referred to in subsection (1) which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement or acquisition referred to in subsection (1), and a statement as to the method by which the fairness of the proposal was determined.

(f) The amount of each class of any security referred to in subsection (1) which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(g) A full description of any contracts, arrangements or understandings with respect to any security referred to in subsection (1) in which any acquiring party is involved, including but not limited to, transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into.

(h) A description of the purchase of any security referred to in subsection (1) during the twelve (12) calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers and consideration paid or agreed to be paid therefor.

(i) A description of any recommendations to purchase any security referred to in subsection (1) made during the twelve (12) calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party.

(j) Copies of all tender offers for, requests, or invitations for tenders of, exchange offers for and agreements to acquire or exchange any securities referred to in subsection (1) and (if distributed) of additional soliciting material relating thereto.

(k) The terms of any agreement, contract or understanding made with or proposed to be made with any broker-dealer as to solicitation of securities referred to in subsection (1) for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

(*l*) An agreement by the person required to file the statement referred to in subsection (1) that it will provide the annual report, specified in Section 83-6-5(5), for so long as control exists.

(m) An acknowledgment by the person required to file the statement referred to in subsection (1) that the person and all subsidiaries within its control in the insurance holding company system will provide information to the commissioner upon request as necessary to evaluate enterprise risk to the insurer.

(n) Such additional information as the commissioner may by rule or

regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

If the person required to file the statement referred to in subsection (1) is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by paragraphs (a) through (n) shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group and each person who controls such partner or member. If any such partner, member or person is a corporation, or the person required to file the statement referred to in subsection (1) is a corporation, the commissioner may require that the information called for by paragraphs (a) through (n) shall be given with respect to such corporation, each officer and director of such corporation and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of such corporation.

If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to such insurer within two (2) business days after the person learns of such change.

(3) If any offer, request, invitation, agreement or acquisition referred to in subsection (1) is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (1) may utilize such documents in furnishing the information called for by that statement.

(4)(a) The commissioner shall approve any merger or other acquisition of control referred to in subsection (1) unless, after a public hearing thereon, he finds that:

(i) After the change of control, the domestic insurer referred to in subsection (1) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(ii) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein;

(iii) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;

(iv) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(v) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in

the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

(vi) The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

(b) The public hearing referred to in paragraph (a) of this subsection shall be commenced not less than thirty (30) days after the statement required by subsection (1) is filed, and at least twenty (20) days' notice thereof shall be given by the commissioner to the person filing the statement. Not less than seven (7) days' notice of such public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The commissioner shall make a determination within thirty (30) days after the conclusion of such hearing. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings. All discovery proceedings shall be concluded not later than three (3) days prior to the commencement of the public hearing.

(c) The commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control.

(d) If the proposed acquisition of control will require the approval of more than one (1) commissioner, the public hearing referred to in paragraph (a) of subsection (4) may be held on a consolidated basis upon request of the person filing the statement referred to in subsection (1) of this section. Such person shall file the statement referred to in subsection (1) with the National Association of Insurance Commissioners (NAIC) within five (5) days of making the request for a public hearing. A commissioner may opt out of a consolidated hearing, and shall provide notice to the applicant of the opt out within ten (10) days of the receipt of the statement referred to in subsection (1). A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the commissioners of the states in which the insurers are domiciled. Such commissioners shall hear and receive evidence. A commissioner may attend such hearing, in person or by telecommunication.

(e) In connection with a change of control of a domestic insurer, any determination by the commissioner that the person acquiring control of the insurer shall be required to maintain or restore the capital of the insurer to the level required by the laws and regulations of this state shall be made not later than sixty (60) days after the date of notification of the change in control submitted pursuant to Section 83-6-24(1).

(5) The provisions of this section shall not apply to any offer, request, invitation, agreement or acquisition which the commissioner by order shall exempt therefrom as (i) not having been made or entered into for the purpose

and not having the effect of changing or influencing the control of a domestic insurer, or (ii) as otherwise not comprehended within the purposes of this section.

(6) The following shall be violations of this section:

(a) The failure to file any statement, amendment or other material required to be filed pursuant to subsection (1) or (2); or

(b) The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given his approval thereto.

(7) The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled or authorized to do business in this state who files a statement with the commissioner under this section, and overall actions involving such person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such person at his last-known address.

**HISTORY: Laws, 1992, ch. 573, § 5; Laws, 1997, ch. 410, § 9; Laws, 2013, ch. 416, § 12; Laws, 2017, ch. 306, § 3, eff from and after passage (approved Mar. 6, 2017).**

**Editor's Notes —** Laws of 2013, ch. 416, § 16, provides:

"SECTION 16. This act shall take effect and be in force from and after July 1, 2014, except for the provisions contained in Sections 3 through 14, which shall take effect and be in force from and after July 1, 2013."

Laws of 2017, ch. 306, § 22, effective March 6, 2017, provides:

"SECTION 22. This act shall take effect and be in force from and after its passage, except Sections 11 through 21 of this act [codified as Sections 83-85-1 through 83-85-21] shall take effect and be in force from and after January 1, 2018. The first filing of the ORSA Summary Report shall be in 2018 pursuant to Section 16 of this act [codified as Section 83-85-11]."

**Amendment Notes —** The 2013 amendment in (1), inserted the (a) and (b) designations and added (c); added (2)( *l*) and (m) and redesignated former (2)( *l*) as (2)(n); added (4)(d) and (e); and made a minor stylistic change.

The 2017 amendment, effective March 6, 2017, added (1)(d); and substituted "called for by paragraphs (a) through (n)" for "called for by paragraphs (a) through ( *l*)" both times it appears in the next-to-last paragraph of (2).

## § 83-6-26. Management of domestic insurers subject to registration.

(1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this section.

(2) Nothing in this section shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel,

property or services with one or more other persons under arrangements meeting the standards of Section 83-6-21.

(3) Not less than one-third (⅓) of the directors of a domestic insurer, and not less than one-third (⅓) of the members of each committee of the board of directors of any domestic insurer shall be persons who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or entity. At least one (1) such person must be included in any quorum for the transaction of business at any meeting of the board of directors or any committee thereof.

(4) The board of directors of a domestic insurer shall establish one or more committees comprised solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. The committee or committees shall have responsibility for nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed to be principal officers of the insurer and recommending to the board of directors the selection and compensation of the principal officers.

(5) The provisions of subsections (3) and (4) shall not apply to a domestic insurer if the person controlling the insurer, such as an insurer, a mutual insurance holding company, or a publicly held corporation, has a board of directors and committees thereof that meet the requirements of subsections (3) and (4) with respect to such controlling entity.

(6) An insurer may make application to the commissioner for a waiver from the requirements of this section, if the insurer's annual direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, is less than Three Hundred Million Dollars ($300,000,000.00). An insurer may also make application to the commissioner for a waiver from the requirements of this section based upon unique circumstances. The commissioner may consider various factors including, but not limited to, the type of business entity, volume of business written, availability of qualified board members, or the ownership or organizational structure of the entity.

**HISTORY: Laws, 2013, ch. 416, § 13, eff from and after July 1, 2013.**

**Editor's Notes —** Laws of 2013, ch. 416, § 16, provides:
"SECTION 16. This act shall take effect and be in force from and after July 1, 2014, except for the provisions contained in Sections 3 through 14, which shall take effect and be in force from and after July 1, 2013."

## § 83-6-27. Financial examination of registered insurer or affiliate.

(1) **Power of commissioner.** Subject to the limitation contained in this section and in addition to the powers which the commissioner has under Sections 83-5-201 through 83-5-217 relating to the examination of insurers,

the commissioner shall have the power to examine any insurer registered under Section 83-6-3 and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis.

(2) **Access to books and records.**

(a) The commissioner may order any insurer registered under Section 83-6-3 to produce such records, books, or other information in the possession of the insurer or its affiliates as are reasonably necessary to determine compliance with this chapter.

(b) To determine compliance with this chapter, the commissioner may order any insurer registered under Section 83-6-3 to produce information not in the possession of the insurer if the insurer can obtain access to such information pursuant to contractual relationships, statutory obligations, or other method. In the event the insurer cannot obtain the information requested by the commissioner, the insurer shall provide the commissioner a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of information. Whenever it appears to the commissioner that the detailed explanation is without merit, the commissioner may require, after notice and hearing, the insurer to pay a penalty of One Hundred Dollars ($100.00) for each day's delay, or may suspend or revoke the insurer's license.

(3) **Use of consultants.** The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff which are reasonably necessary to assist in the conduct of the examination under subsection (1) of this section. Any persons so retained are under the direction and control of the commissioner and shall act in a purely advisory capacity.

(4) **Expenses.** Each registered insurer producing for examination records, books and papers pursuant to subsection (1) of this section shall be liable for and shall pay the expense of the examination in accordance with Section 83-5-213.

(5) **Compelling production.** In the event the insurer fails to comply with an order, the commissioner shall have the power to examine the affiliates to obtain the information. The commissioner shall also have the power to issue subpoenas, to administer oaths, and to examine under oath any person for purposes of determining compliance with this section. Upon the failure or refusal of any person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court. Every person shall be obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the state. He or she shall be entitled to the same fees and mileage, if claimed, as a witness in Section 25-7-47, which fees, mileage, and actual expense, if any, necessarily incurred in

securing the attendance of witnesses, and their testimony, shall be itemized and charged against, and be paid by, the company being examined.

**HISTORY: Laws, 1974, ch. 366, § 4; Laws, 2001, ch. 379, § 1; Laws, 2013, ch. 416, § 14; Laws, 2017, ch. 306, § 5, eff from and after passage (approved Mar. 6, 2017).**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (4) by inserting the word "the" following "expense of." The Joint Committee ratified the correction at the August 15, 2017, meeting of the Committee.

**Editor's Notes —** Laws of 2013, ch. 416, § 16, provides:

"SECTION 16. This act shall take effect and be in force from and after July 1, 2014, except for the provisions contained in Sections 3 through 14, which shall take effect and be in force from and after July 1, 2013."

Laws of 2017, ch. 306, § 22, effective March 6, 2017, provides:

"SECTION 22. This act shall take effect and be in force from and after its passage, except Sections 11 through 21 of this act [codified as Sections 83-85-1 through 83-85-21] shall take effect and be in force from and after January 1, 2018. The first filing of the ORSA Summary Report shall be in 2018 pursuant to Section 16 of this act [codified as Section 83-85-11]."

**Amendment Notes —** The 2013 amendment substituted "this chapter" for "Sections 83-6-3 through 83-6-19" in the first sentence of (1).

The 2017 amendment, effective March 6, 2017, added subsection headings throughout; rewrote (1), which read: "The commissioner is authorized to order any insurer registered under this chapter to produce such records, books, or other information papers in the possession of the insurer or its affiliates which are necessary to ascertain the financial condition or legality of conduct of such insurer. In the event such insurer fails to comply with such order, the commissioner is authorized to examine such affiliates to obtain such information"; rewrote (2), which read: "The commissioner shall exercise his authority under subsection (1) of this section only if the interests of the policyholders of such insurer may be adversely affected"; rewrote (4), which read: "Each registered insurer producing for examination records, books and papers pursuant to subsection (1) of this section is liable for the expense of such examination"; and added (5).

## § 83-6-29. Confidential treatment of information, materials or documents obtained or disclosed during certain examinations.

(1) Documents, materials or other information in the possession or control of the Department of Insurance that are obtained by or disclosed to the commissioner or any other person during an examination or investigation made pursuant to Section 83-6-27 and all information reported pursuant to Sections 83-6-24(2)(*l*) and (m), Sections 83-6-3, 83-6-5 and 83-6-21 shall be confidential by law and privileged, shall not be subject to the Mississippi Public Records Act, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner shall not otherwise make the

documents, materials or other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication thereof, in which event the commissioner may publish all or any part in such manner as may be deemed appropriate.

(2) Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner or with whom such documents, materials or other information are shared pursuant to this section shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to subsection (1) of this section.

(3) In order to assist in the performance of the commissioner's duties, the commissioner:

(a) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subsection (1) of this section, with other state, federal and international regulatory agencies, with the National Association of Insurance Commissioners (NAIC) and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material or other information, and has verified in writing the legal authority to maintain confidentiality.

(b) Notwithstanding paragraph (a) of this subsection, the commissioner may only share confidential and privileged documents, material or information reported pursuant to Section 83-6-5(5) with commissioners of states having statutes or regulations substantially similar to subsection (1) of this section and who have agreed in writing not to disclose such information.

(c) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information from the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information.

(d) Shall enter into written agreements with the NAIC governing sharing and use of information provided pursuant to this section consistent with this subsection that shall:

(i) Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC and its affiliates and subsidiaries pursuant to this section, including procedures and protocols for sharing by the NAIC with other state, federal or international regulators;

(ii) Specify that ownership of information shared with the NAIC and its affiliates and subsidiaries pursuant to this section remains with the

commissioner and the NAIC's use of the information is subject to the direction of the commissioner;

(iii) Require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC pursuant to this section is subject to a request or subpoena to the NAIC for disclosure or production; and

(iv) Require the NAIC and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the NAIC and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the NAIC and its affiliates and subsidiaries pursuant to this section.

(4) The sharing of information by the commissioner pursuant to this section shall not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution and enforcement of the provisions of this section.

(5) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (3) of this section.

(6) Documents, materials or other information in the possession or control of the NAIC pursuant to this section shall be confidential by law and privileged, shall not be subject to the Mississippi Public Records Act, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

**HISTORY: Laws, 1974, ch. 366, § 5; Laws, 2013, ch. 416, § 15, eff from and after July 1, 2014.**

**Editor's Notes —** Laws of 2013, ch. 416, § 16, provides:

"SECTION 16. This act shall take effect and be in force from and after July 1, 2014, except for the provisions contained in Sections 3 through 14, which shall take effect and be in force from and after July 1, 2013."

**Amendment Notes —** The 2013 amendment, effective July 1, 2014, rewrote the section, which read: "The commissioner, by rule, may designate for confidential treatment any information, documents and copies thereof obtained by or disclosed to himself or any other person in the course of an examination or investigation made pursuant to Section 83-6-27 and any information reported pursuant to Sections 83-6-3 through 83-6-19. Any information, document or copy so designated shall not be made public by the commissioner or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains."

**Cross References —** Mississippi Public Records Act, see § 25-61-1 et seq.

## § 83-6-33. Enjoinder of violations; enjoinder of voting of certain securities at shareholder's meeting; sequester of certain voting securities.

**Cross References —** Applicability of this section to acquisitions involving insurers covered under § 83-6-22, see § 83-6-22.

## § 83-6-39. Suspension, revocation or refusal to renew license or certificate of authority.

**Cross References —** Applicability of this section to acquisitions involving insurers covered under § 83-6-22, see § 83-6-22.

## § 83-6-45. Supervisory colleges.

(1) **Power of commissioner.** With respect to any insurer registered under Section 83-6-3, and in accordance with subsection (3) of this section, the commissioner shall also have the power to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance by the insurer with this chapter. The powers of the commissioner with respect to supervisory colleges include, but are not limited to, the following:

(a) Initiating the establishment of a supervisory college;

(b) Clarifying the membership and participation of other supervisors in the supervisory college;

(c) Clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor;

(d) Coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and processes for information sharing; and

(e) Establishing a crisis management plan.

(2) **Expenses.** Each registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the commissioner's participation in a supervisory college in accordance with subsection (3) of this section, including reasonable travel expenses. For purposes of this section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates, and the commissioner may establish a regular assessment to the insurer for the payment of these expenses.

(3) **Supervisory college.** In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management and governance processes, and as part of the examination of individual insurers in accordance with Section 83-6-27, the commissioner may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal and international regulatory agencies. The commissioner may enter into agreements in accordance with the confidentiality provisions of this chapter providing the basis for cooperation between the commissioner and the other regulatory agencies, and the activities of the supervisory college. Nothing in this section shall delegate to the supervisory college the authority of the commissioner to regulate or supervise the insurer or its affiliates within its jurisdiction.

**HISTORY: Laws, 2017, ch. 306, § 6, eff from and after passage (approved Mar. 6, 2017).**

**Editor's Notes —** Laws of 2017, ch. 306, § 22, effective March 6, 2017, provides: "SECTION 22. This act shall take effect and be in force from and after its passage, except Sections 11 through 21 of this act [codified as Sections 83-85-1 through 83-85-21] shall take effect and be in force from and after January 1, 2018. The first filing of the ORSA Summary Report shall be in 2018 pursuant to Section 16 of this act [codified as Section 83-85-11]."

## § 83-6-47. Group-wide supervision of internationally active insurance groups.

(1) The commissioner is authorized to act as the group-wide supervisor for any internationally active insurance group in accordance with the provisions of this section. However, the commissioner may otherwise acknowledge another regulatory official as the group-wide supervisor where the internationally active insurance group:

(a) Does not have substantial insurance operations in the United States;

(b) Has substantial insurance operations in the United States, but not in this state; or

(c) Has substantial insurance operations in the United States and this state, but the commissioner has determined pursuant to the factors set forth in subsections (2) and (6) of this section that the other regulatory official is the appropriate group-wide supervisor.

An insurance holding company system that does not otherwise qualify as an internationally active insurance group may request that the commissioner make a determination or acknowledgment as to a group-wide supervisor pursuant to this section.

(2) In cooperation with other state, federal and international regulatory agencies, the commissioner will identify a single group-wide supervisor for an internationally active insurance group. The commissioner may determine that the commissioner is the appropriate group-wide supervisor for an internationally active insurance group that conducts substantial insurance operations concentrated in this state. However, the commissioner may acknowledge that a regulatory official from another jurisdiction is the appropriate group-wide supervisor for the internationally active insurance group. The commissioner shall consider the following factors when making a determination or acknowledgment under this subsection:

(a) The place of domicile of the insurers within the internationally active insurance group that hold the largest share of the group's written premiums, assets or liabilities;

(b) The place of domicile of the top-tiered insurer(s) in the insurance holding company system of the internationally active insurance group;

(c) The location of the executive offices or largest operational offices of the internationally active insurance group;

(d) Whether another regulatory official is acting or is seeking to act as the group-wide supervisor under a regulatory system that the commissioner determines to be:

(i) Substantially similar to the system of regulation provided under the laws of this state, or

(ii) Otherwise sufficient in terms of providing for group-wide supervision, enterprise risk analysis, and cooperation with other regulatory officials; and

(e) Whether another regulatory official acting or seeking to act as the group-wide supervisor provides the commissioner with reasonably reciprocal recognition and cooperation.

However, a commissioner identified under this section as the group-wide supervisor may determine that it is appropriate to acknowledge another supervisor to serve as the group-wide supervisor. The acknowledgment of the group-wide supervisor shall be made after consideration of the factors listed in paragraphs (a) through (e) of this subsection, and shall be made in cooperation with and subject to the acknowledgment of other regulatory officials involved with supervision of members of the internationally active insurance group, and in consultation with the internationally active insurance group.

(3) Notwithstanding any other provision of law, when another regulatory official is acting as the group-wide supervisor of an internationally active insurance group, the commissioner shall acknowledge that regulatory official as the group-wide supervisor. However, in the event of a material change in the internationally active insurance group that results in:

(a) The internationally active insurance group's insurers domiciled in this state holding the largest share of the group's premiums, assets or liabilities; or

(b) This state being the place of domicile of the top-tiered insurer(s) in the insurance holding company system of the internationally active insurance group, the commissioner shall make a determination or acknowledgment as to the appropriate group-wide supervisor for such an internationally active insurance group pursuant to subsection (2) of this section.

(4) Pursuant to Section 83-6-27, the commissioner is authorized to collect from any insurer registered pursuant to Section 83-6-3 all information necessary to determine whether the commissioner may act as the group-wide supervisor of an internationally active insurance group or if the commissioner may acknowledge another regulatory official to act as the group-wide supervisor. Prior to issuing a determination that an internationally active insurance group is subject to group-wide supervision by the commissioner, the commissioner shall notify the insurer registered pursuant to Section 83-6-3 and the ultimate controlling person within the internationally active insurance group. The internationally active insurance group shall have not less than thirty (30) days to provide the commissioner with additional information pertinent to the pending determination. The commissioner shall publish in the Mississippi Administrative Code and on its Internet website the identity of internationally active insurance groups that the commissioner has determined are subject to group-wide supervision by the commissioner.

(5) If the commissioner is the group-wide supervisor for an internationally active insurance group, the commissioner is authorized to engage in any of the following group-wide supervision activities:

(a) Assess the enterprise risks within the internationally active insurance group to ensure that:

(i) The material financial condition and liquidity risks to the members of the internationally active insurance group that are engaged in the business of insurance are identified by management; and

(ii) Reasonable and effective mitigation measures are in place;

(b) Request, from any member of an internationally active insurance group subject to the commissioner's supervision, information necessary and appropriate to assess enterprise risk, including, but not limited to, information about the members of the internationally active insurance group regarding:

(i) Governance, risk assessment and management;

(ii) Capital adequacy; and

(iii) Material intercompany transactions;

(c) Coordinate and, through the authority of the regulatory officials of the jurisdictions where members of the internationally active insurance group are domiciled, compel development and implementation of reasonable measures designed to ensure that the internationally active insurance group is able to timely recognize and mitigate enterprise risks to members of such internationally active insurance group that are engaged in the business of insurance;

(d) Communicate with other state, federal and international regulatory agencies for members within the internationally active insurance group and share relevant information subject to the confidentiality provisions of this chapter, through supervisory colleges as set forth in Section 83-6-45 or otherwise;

(e) Enter into agreements with or obtain documentation from any insurer registered under Section 83-6-3, any member of the internationally active insurance group, and any other state, federal and international regulatory agencies for members of the internationally active insurance group, providing the basis for or otherwise clarifying the commissioner's role as group-wide supervisor, including provisions for resolving disputes with other regulatory officials. Such agreements or documentation shall not serve as evidence in any proceeding that any insurer or person within an insurance holding company system not domiciled or incorporated in this state is doing business in this state or is otherwise subject to jurisdiction in this state; and

(f) Other group-wide supervision activities, consistent with the authorities and purposes enumerated above, as considered necessary by the commissioner.

(6) If the commissioner acknowledges that another regulatory official from a jurisdiction that is not accredited by the NAIC is the group-wide supervisor, the commissioner is authorized to reasonably cooperate, through supervisory colleges or otherwise, with group-wide supervision undertaken by the group-wide supervisor, provided that:

(a) The commissioner's cooperation is in compliance with the laws of this state; and

(b) The regulatory official acknowledged as the group-wide supervisor also recognizes and cooperates with the commissioner's activities as a group-wide supervisor for other internationally active insurance groups where applicable. Where such recognition and cooperation is not reasonably reciprocal, the commissioner is authorized to refuse recognition and cooperation.

(7) The commissioner is authorized to enter into agreements with or obtain documentation from any insurer registered under Section 83-6-3, any affiliate of the insurer, and other state, federal and international regulatory agencies for members of the internationally active insurance group, that provide the basis for or otherwise clarify a regulatory official's role as group-wide supervisor.

(8) The commissioner may promulgate regulations necessary for the administration of this section.

(9) A registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the commissioner's participation in the administration of this section, including the engagement of attorneys, actuaries and any other professionals and all reasonable travel expenses.

**HISTORY: Laws, 2017, ch. 306, § 7, eff from and after passage (approved Mar. 6, 2017).**

**Editor's Notes —** Laws of 2017, ch. 306, § 22, effective March 6, 2017, provides: "SECTION 22. This act shall take effect and be in force from and after its passage, except Sections 11 through 21 of this act [codified as Sections 83-85-1 through 83-85-21] shall take effect and be in force from and after January 1, 2018. The first filing of the ORSA Summary Report shall be in 2018 pursuant to Section 16 of this act [codified as Section 83-85-11]."

# CHAPTER 7.

# LIFE INSURANCE



## GENERAL PROVISIONS



### § 83-7-4. Proceeds of policy; effect of payment when made by insurer or contract issuer in accordance with terms of policy or contract.

Whenever the proceeds of, or payments under, a life insurance policy or annuity contract issued by a life insurance company become payable and the

insurer makes payment thereof in accordance with the terms of the policy or contract, or in accordance with any written assignment thereto, the payee or beneficiary shall be entitled to receive the proceeds or payments and to give full acquittance therefor, and the payment shall fully discharge the insurer from all claims under the policy or contract unless, before payment is made, the insurer has received at its home office written notice by or on behalf of some other person that the other person claims to be entitled to the payment or some interest in the policy or contract. Nothing contained in this section shall affect any claim or right to any policy or contract or the proceeds thereof or payment thereunder as between persons other than the insurer.

**HISTORY: Laws, 2017, ch. 307, § 1, eff from and after July 1, 2017.**

## § 83-7-23. Standard valuation law.

(1) **Title and definitions:**

(a) This section shall be known as the Standard Valuation Law.

(b) For the purposes of this section, the following definitions shall apply on or after the operative date of the valuation manual:

(i) The term "accident and health insurance" means contracts that incorporate morbidity risk and provide protection against economic loss resulting from accident, sickness, or medical conditions and as may be specified in the valuation manual.

(ii) The term "appointed actuary" means a qualified actuary who is appointed in accordance with the valuation manual to prepare the actuarial opinion required in subsection (3)(b) of this section.

(iii) The term "company" means an entity, which:

(A) Has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and has at least one (1) such policy in force or on claim; or

(B) Has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in any state and is required to hold a certificate of authority to write life insurance, accident and health insurance, or deposit-type contracts in this state.

(iv) The term "deposit-type contract" means contracts that do not incorporate mortality or morbidity risks and as may be specified in the valuation manual.

(v) The term "life insurance" means contracts that incorporate mortality risk, including annuity and pure endowment contracts, and as may be specified in the valuation manual.

(vi) The term "NAIC" means the National Association of Insurance Commissioners.

(vii) The term "policyholder behavior" means any action a policyholder, contract holder or any other person with the right to elect options, such as a certificate holder, may take under a policy or contract subject to this section, including, but not limited to, lapse, withdrawal, transfer,

deposit, premium payment, loan, annuitization, or benefit elections prescribed by the policy or contract but excluding events of mortality or morbidity that result in benefits prescribed in their essential aspects by the terms of the policy or contract.

(viii) The term "principle-based valuation" means a reserve valuation that uses one or more methods or one or more assumptions determined by the insurer and is required to comply with subsection (12) of this section as specified in the valuation manual.

(ix) The term "qualified actuary" means an individual who is qualified to sign the applicable statement of actuarial opinion in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements and who meets the requirements specified in the valuation manual.

(x) The term "tail risk" means a risk that occurs either where the frequency of low probability events is higher than expected under a normal probability distribution or where there are observed events of very significant size or magnitude.

(xi) The term "valuation manual" means the manual of valuation instructions adopted by the NAIC as specified in this section or as subsequently amended.

(2) **Reserve valuation:**

(a) Policies and contracts issued prior to the operative date of the valuation manual.

(i) The Insurance Commissioner shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state issued on or after April 14, 1948, and prior to the operative date of the valuation manual, except that, in the case of an alien company, such valuation shall be limited to its United States business. In calculating such reserves, the commissioner may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves herein required of any foreign or alien company, the commissioner may accept any valuation made, or caused to be made, by the insurance supervisory official of any other state or other jurisdiction when such other valuation complies with the minimum standard provided in this section.

(ii) The provisions set forth in subsections (3), (3-a), (3-b), (4), (4-a), (5), (6), (7), (8) and (10) of this section shall apply to all policies and contracts, as appropriate, subject to this section issued on or after April 14, 1948, and prior to the operative date of the valuation manual and the provisions set forth in subsections (11) and (12) of this section shall not apply to any such policies and contracts.

(iii) The minimum standard for the valuation of policies and contracts issued prior to April 14, 1948, shall be that provided by the laws in effect immediately prior to that date.

(b) Policies and contracts issued on or after the operative date of the valuation manual:

(i) The commissioner shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance contracts, annuity and pure endowment contracts, accident and health contracts, and deposit-type contracts of every company issued on or after the operative date of the valuation manual. In lieu of the valuation of the reserves required of a foreign or alien company, the commissioner may accept a valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when the valuation complies with the minimum standard provided in this section.

(ii) The provisions set forth in subsections (11) and (12) of this section shall apply to all policies and contracts issued on or after the operative date of the valuation manual.

(3) **Computation of minimum standard:** Except as otherwise provided in subsections (3-a) and (3-b) of this section the minimum standard for the valuation of all such policies and contracts issued before the operative date of Section 83-7-25 shall be that provided by the laws in effect immediately before such date.

Except as otherwise provided in subsections (3-a) and (3-b) of this section, the minimum standard for the valuation of all such policies and contracts issued on or after the operative date of Section 83-7-25 (the standard nonforfeiture law) shall be the commissioners reserve valuation methods defined in subsections (4), (4-a) and (7) of this section, three and one-half percent (3-½%) interest, or in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after September 1, 1975, four percent (4%) interest for such policies issued prior to January 1, 1980, five and one-half percent (5-½%) interest for single premium life insurance policies and four and one-half percent (4-½%) interest for all other such policies issued on and after January 1, 1980, and the following tables:

(a) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, – the Commissioners 1941 Standard Ordinary Mortality Table for such policies issued before the operative date of subsection (5-a) of Section 83-7-25 of the Standard Nonforfeiture Law for Life Insurance as amended; the Commissioners 1958 Standard Ordinary Mortality Table for such policies issued on or after the operative date of subsection (5-a) of the Standard Nonforfeiture Law for Life Insurance as amended (Section 83-7-25(5-a)) and before the operative date of subsection (5-c) of the Standard Nonforfeiture Law for Life Insurance as amended (Section 83-7-25(5-c)), provided that for any category of such policies issued on female risks all modified net premiums and present values referred to in this section may be calculated according to an age not more than six (6) years younger than the actual age of the insured; and for such policies issued on or after the operative date of subsection (5-c) of the Standard Nonforfeiture Law for Life Insurance as amended (Section 83-7-25(5-c)):

(i) The Commissioners 1980 Standard Ordinary Mortality Table, or

(ii) At the election of the insurer for any one or more specified plans

of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors, or

(iii) Any ordinary mortality table, adopted after 1980 by the NAIC, which is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies.

(b) For industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies, – the 1941 Standard Industrial Mortality Table for such policies issued prior to the operative date of subsection (5-b) of Section 83-7-25, the Standard Nonforfeiture Law for Life Insurance as amended, and for such policies issued on or after such operative date the Commissioners 1961 Standard Industrial Mortality Table or any industrial mortality table, adopted after 1980 by the NAIC, which is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies.

(c) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the 1937 Standard Annuity Mortality Table or, at the option of the company, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the commissioner.

(d) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the Group Annuity Mortality Table for 1951, any modification of such table approved by the commissioner, or, at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(e) For total and permanent disability benefits in or supplementary to ordinary policies or contracts, – for policies or contracts issued on or after January 1, 1966, the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates, adopted after 1980 by the NAIC, which are approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies; for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either such tables or, at the option of the company, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(f) For accidental death benefits in or supplementary to policies – for policies issued on or after January 1, 1966, the 1959 Accidental Death Benefits Table or any accidental death benefits table, adopted after 1980 by the NAIC, which is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies; for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the company, the Inter-

Company Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Inter-Company Double Indemnity Mortality Table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(g) For group life insurance, life insurance issued on the substandard basis and other special benefits – such tables as may be approved by the commissioner.

(3-a) **Computation of minimum standard for annuities:**

(a) Except as provided in subsection (3-b), the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this subsection (3-a), as defined herein, and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts, shall be the commissioner's reserve valuation methods defined in subsections (4) and (4-a) of this section and the following tables and interest rates:

(i) For individual annuity and pure endowment contracts, issued before January 1, 1980, excluding any disability and accidental death benefits in such contracts, – the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the commissioner, and six percent (6%) interest for single premium immediate annuity contracts, and four percent (4%) interest for all other individual annuity and pure endowment contracts.

(ii) For individual single premium immediate annuity contracts issued on or after January 1, 1980, excluding any disability and accidental death benefits in such contracts, – the 1971 Individual Annuity Mortality Table, or any individual annuity mortality table, adopted after 1980 by the NAIC, which is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the commissioner, and seven and one-half percent (7-½%) interest.

(iii) For individual annuity and pure endowment contracts issued on or after January 1, 1980, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, or any individual annuity mortality table, adopted after 1980 by the NAIC, which is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the commissioner, and five and one-half percent (5-½%) interest for single premium deferred annuity and pure endowment contracts and four and one-half percent (4-½%) interest for all other such individual annuity and pure endowment contracts.

(iv) For all annuities and pure endowments purchased prior to January 1, 1980, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table, or any modification of this table approved by the commissioner, and six percent (6%) interest.

(v) For all annuities and pure endowments purchased on or after January 1, 1980, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table, or any group annuity mortality table, adopted after 1980 by the NAIC, which is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such annuities and pure endowments, or any modification of these tables approved by the commissioner, and seven and one-half percent (7-½%) interest.

(b) After September 1, 1975, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this subsection (3-a) after a specified date before January 1, 1979, which shall be the operative date of this subsection for such insurer, provided an insurer may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If an insurer makes no such election, the operative date of this subsection for such insurer shall be January 1, 1979.

(3-b) **Computation of minimum standard by calendar year of issue:**

(a) Applicability of this subsection. The interest rates used in determining the minimum standard for the valuation of the following shall be the calendar year statutory valuation interest rates as defined in this subsection:

(i) Life insurance policies issued in a particular calendar year, on or after the operative date of Section (5-c) of the Standard Nonforfeiture Law for Life Insurance (Section 83-7-25(5-c));

(ii) Individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1984;

(iii) Annuities and pure endowments purchased in a particular calendar year on or after January 1, 1984, under group annuity and pure endowment contracts; and

(iv) The net increase, if any, in a particular calendar year after January 1, 1984, in amounts held under guaranteed interest contracts shall be the calendar year statutory valuation interest rates as defined in this subsection.

(b) Calendar year statutory valuation interest rates.

(i) The calendar year statutory valuation interest rates, I, shall be determined as follows and the results rounded to the nearer one-quarter of one percent (¼ of 1%):

(A) For life insurance,

I =.03 + W (R1 -.03) + W/2 (R2 -.09);

(B) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options,

I =.03 + W (R -.03)

where R1 is the lesser of R and.09, R2 is the greater of R and.09, R

is the reference interest rate defined in this section, and W is the weighting factor defined in this section;

(C) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in (B) above, the formula for life insurance stated in (A) above shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of ten (10) years and the formula for single premium immediate annuities stated in (B) above shall apply to annuities and guaranteed interest contracts with guarantee duration of ten (10) years or less;

(D) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in (B) above shall apply;

(E) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in (B) above shall apply.

(ii) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one-half of one percent (½ of 1%), the calendar year statutory valuation interest rate for such life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980 (using the reference interest rate defined for 1979) and shall be determined for each subsequent calendar year regardless of when Section (5-c) of the Standard Nonforfeiture Law for Life Insurance (Section 83-7-25(5-c)) becomes operative.

(c) Weighting factors.

(i) The weighting factors referred to in the formulas stated above are given in the following tables:

(A) Weighting factors for life insurance:

| Guarantee Duration (Years) | Weighting Factors |
|---|---|
| 10 or less | .50 |
| More than 10, but not more than 20 | .45 |
| More than 20 | .35 |

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with

premium rates or nonforfeiture values or both which are guaranteed in the original policy;

(B) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options:

.80

(C) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in (B) above, shall be as specified in tables 1, 2 and 3 below, according to the rules and definitions in 4 and 5 below:

1. For annuities and guaranteed interest contracts valued on an issue year basis:

| Guarantee Duration (Years) | Weighting Factor for Plan Type | | |
|---|---|---|---|
| | A | B | C |
| 5 or less: | .80 | .60 | .50 |
| More than 5, but not more than 10: | .75 | .60 | .50 |
| More than 10, but not more than 20: | .65 | .50 | .45 |
| More than 20: | .45 | .35 | .35 |

2. For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in 1 above increased by:

| Plan Type | | |
|---|---|---|
| A | B | C |
| .15 | .25 | .05 |

3. For annuities and guaranteed interest contracts valued on an issue year basis (other than those with no cash settlement options) which do not guarantee interest on considerations received more than one (1) year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than twelve (12) months beyond the valuation date, the factors shown in 1 or derived in 2 increased by:

| Plan Type | | |
|---|---|---|
| A | B | C |
| .05 | .05 | .05 |

4. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation

interest rate for life insurance policies with guarantee duration in excess of twenty (20) years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

5. Plan type as used in the above tables is defined as follows:

Plan Type A: At any time policyholder may withdraw funds only (1) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or (2) without such adjustment but in installments over five (5) years or more, or (3) as an immediate life annuity, or (4) no withdrawal permitted.

Plan Type B: Before expiration of the interest rate guarantee, policyholder may withdraw funds only (1) with adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or (2) without such adjustment but in installments over five (5) years or more, or (3) no withdrawal permitted. At the end of interest rate guarantee funds may be withdrawn without such adjustment in a single sum or installments over less than five (5) years.

Plan Type C: Policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five (5) years either (1) without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or (2) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(ii) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis. As used in this subsection, an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract, and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

(d) Reference interest rate.

(i) The reference interest rate referred to in paragraph (b) of this subsection shall be defined as follows:

(A) For all life insurance, the lesser of the average over a period of thirty-six (36) months and the average over a period of twelve (12)

months, ending on June 30 of the calendar year next preceding the year of issue, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(B) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or year of purchase of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(C) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in (B) above, with guarantee duration in excess of ten (10) years, the lesser of the average over a period of thirty-six (36) months and the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(D) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in (B) above, with guarantee duration of ten (10) years or less, the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(E) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(F) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in (B) above, the average over a period of twelve (12) months, ending on June 30 of the calendar year of the change in the fund, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(e) Alternative method for determining reference interest rates.

In the event that the monthly average of the composite yield on seasoned corporate bonds, is no longer published by Moody's Investors Service, Inc., or in the event that the NAIC determines that the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc., is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate, which is adopted by the National Association of Insurance Commissioners and approved by regulation promulgated by the commissioner, may be substituted.

(4) **Reserve valuation method-life insurance and endowment benefits:** Except as otherwise provided in subsections (4-a) and (7), reserves according to the commissioners reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (a) over (b), as follows:

(a) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one (1) per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due; provided, however, that such net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan for insurance of the same amount at an age one (1) year higher than the age at issue of such policy.

(b) A net one-year term premium for such benefits provided for in the first policy year.

Provided that for any life insurance policy issued on or after January 1, 1987, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the reserve according to the commissioners reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in subsection (7), be the greater of the reserve as of such policy anniversary calculated as described in the preceding paragraph and the reserve as of such policy anniversary calculated as described in that paragraph, but with (i) the value defined in subparagraph (a) of that paragraph being reduced by fifteen percent (15%) of the amount of such excess first year premium, (ii) all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date, (iii) the policy being assumed to mature on such date as an endowment, and (iv) the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison the mortality and interest bases stated in subsections (3-a) and (3-b) shall be used.

**Reserves according to the commissioners reserve valuation method for:** (i) life insurance policies providing for a varying amount of

insurance or requiring the payment of varying premiums; (ii) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended; (iii) disability and accidental death benefits in all policies and contracts; and (iv) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the principles of the preceding paragraphs of this subsection.

(4-a) **Reserve valuation method-annuity and pure endowment benefits:** This subsection shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended.

Reserves according to the commissioners annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values.

(5) **Minimum reserves:** In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after the operative date of the standard nonforfeiture law (Section 83-7-25), be less than the aggregate reserves calculated in accordance with the methods set forth in subsections (4), (4-a), (7) and (8) and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(6) **Optional reserve calculation:** Reserves for all policies and contracts issued prior to the effective date of Section 83-7-25 (the standard nonforfeiture law) may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately prior to such date.

Reserves for any category of policies, contracts or benefits as established by the commissioner, issued on or after the operative date of Section 83-7-25 (the standard nonforfeiture law), may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be greater than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for in the policies or contracts.

Any company which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum herein provided.

(7) **Reserve calculation-valuation net premium exceeding the gross premium charges:** If in any contract year the gross premium charged by any life insurance company on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon, but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest and method actually used for such policy or contract, or the reserve calculated by the method actually used for such policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in subsections (3) and (3-b).

Provided that for any life insurance policy issued on or after January 1, 1987, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the foregoing provisions of this subsection (7) shall be applied as if the method actually used in calculating the reserve for such policy were the method described in subsection (4), ignoring the second paragraph of subsection (4). The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with subsection (4), including the second paragraph of that subsection, and the minimum reserve calculated in accordance with this subsection (7).

(8) **Reserve calculation-indeterminate premium plans:** In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be

determined by the methods described in subsections (4), (4-a) and (7), the reserves which are held under any such plan must:

(a) Be appropriate in relation to the benefits and the pattern of premiums for that plan, and

(b) Be computed by a method which is consistent with the principles of this Standard Valuation Law as determined by regulations promulgated by the commissioner.

(9) **Actuarial opinion of reserves:**

(a) Actuarial opinion prior to the operative date of the valuation manual.

(i) General. Every life insurance company doing business in this state annually shall submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by regulation are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this state. The commissioner by regulation shall define the specifics of this opinion and add any other items deemed to be necessary to its scope.

(ii) Actuarial analysis of reserves and assets supporting reserves.

(A) Every life insurance company, except as exempted by or in accordance with regulation, shall also annually include in the opinion required by paragraph (a) of this subsection an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by regulation, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts including, but not limited to, the benefits under and expenses associated with the policies and contracts.

(B) The commissioner may provide by regulation for a transition period for establishing any higher reserves which the qualified actuary may deem necessary in order to render the opinion required by this subsection.

(iii) Each opinion required by subsection (9)(a)(ii) of this subsection shall be governed by the following provisions:

(A) A memorandum, in form and substance acceptable to the commissioner as specified by regulation, shall be prepared to support each actuarial opinion.

(B) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified by regulation or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards

prescribed by the regulations or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare such supporting memorandum as is required by the commissioner.

(iv) Every opinion required by subsection (9)(a) shall be governed by the following provisions:

(A) The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after December 31, 1994.

(B) The opinion shall apply to all business in force including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by regulation.

(C) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board and on such additional standards as the commissioner may by regulation prescribe.

(D) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(E) For the purposes of this section, "qualified actuary" means a member in good standing of the American Academy of Actuaries who meets the requirements set forth in such regulations.

(F) Except in cases of fraud or willful misconduct, the qualified actuary shall not be liable for damages to any person, other than the insurance company and the commissioner, for any act, error, omission, decision or conduct with respect to the actuary's opinion.

(G) Disciplinary action by the commissioner against the company or the qualified actuary shall be defined in regulations by the commissioner.

(H) Any memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection therewith, shall be kept confidential by the commissioner and shall not be made public and shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or by regulations promulgated hereunder; however, the memorandum or other material may otherwise be released by the commissioner with the written consent of the company or to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential memorandum is cited by the company in its marketing or is cited before any governmental agency other than a state insurance

department or is released by the company to the news media, all portions of the confidential memorandum shall be no longer confidential.

(b) Actuarial opinion of reserves after the operative date of the valuation manual.

(i) General. Every company with outstanding life insurance contracts, accident and health insurance contracts or deposit-type contracts in this state and subject to regulation by the commissioner shall annually submit the opinion of the appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this state. The valuation manual will prescribe the specifics of this opinion including any items deemed to be necessary to its scope.

(ii) Actuarial analysis of reserves and assets supporting reserves. Every company with outstanding life insurance contracts, accident and health insurance contracts or deposit-type contracts in this state and subject to regulation by the commissioner, except as exempted in the valuation manual, shall also annually include in the opinion required by subparagraph (i) of this subsection (9)(b), an opinion of the same appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified in the valuation manual, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including, but not limited to, the benefits under and expenses associated with the policies and contracts.

(iii) Each opinion required by subsection (9)(b)(ii) shall be governed by the following provisions:

(A) A memorandum, in form and substance as specified in the valuation manual, and acceptable to the commissioner, shall be prepared to support each actuarial opinion.

(B) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified in the valuation manual or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the valuation manual or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting memorandum required by the commissioner.

(iv) Requirements for all opinions subject to subsection (9)(b):

(A) The opinion shall be in form and substance as specified in the valuation manual and acceptable to the commissioner.

(B) The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after the operative date of the valuation manual.

(C) The opinion shall apply to all policies and contracts subject to subsection (9) (b) (ii), plus other actuarial liabilities as may be specified in the valuation manual.

(D) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board or its successor, and on such additional standards as may be prescribed in the valuation manual.

(E) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(F) Except in cases of fraud or willful misconduct, the appointed actuary shall not be liable for damages to any person (other than the insurance company and the commissioner) for any act, error, omission, decision or conduct with respect to the appointed actuary's opinion.

(G) Disciplinary action by the commissioner against the company or the appointed actuary shall be defined in regulations by the commissioner.

(10) For accident and health insurance contracts issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under subsection (2)(b). For accident and health insurance contracts issued on or after April 14, 1948, and prior to the operative date of the valuation manual, the minimum standard valuation is the standard prescribed by the applicable laws and regulations of this state.

(11) **Valuation manual for policies issued on or after the operative date of the valuation manual:**

(a) For policies issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under subsection (2)(b), except as provided under paragraph (e) or (g) of this subsection.

(b) The operative date of the valuation manual is January 1 of the first calendar year following the first July 1 as of which all of the following have occurred:

(i) The valuation manual has been adopted by the NAIC by an affirmative vote of at least forty-two (42) members, or three-fourths (¾) of the members voting, whichever is greater.

(ii) The Standard Valuation Law, as amended by the NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted by states representing greater than seventy-five percent (75%) of the direct premiums written as reported in the following annual statements submitted for 2008: life, accident and health annual statements; health annual statements; or fraternal annual statements.

(iii) The Standard Valuation Law, as amended by the NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted by at least forty-two (42) of the following fifty-five (55) jurisdictions: The fifty (50) States of the United States, American Samoa, the American Virgin Islands, the District of Columbia, Guam, and Puerto Rico.

(c) Unless a change in the valuation manual specifies a later effective date, changes to the valuation manual shall be effective on January 1 following the date when change to the valuation manual has been adopted by the NAIC by an affirmative vote representing:

(i) At least three-fourths (¾) of the members of the NAIC voting, but not less than a majority of the total membership; and

(ii) Members of the NAIC representing jurisdictions totaling greater than seventy-five percent (75%) of the direct premiums written as reported in the following annual statements most recently available prior to the vote in subsection (c)(i)(A): life, accident and health annual statements, health annual statements, or fraternal annual statements.

(d) The valuation manual must specify all of the following:

(i) Minimum valuation standards for and definitions of the policies or contracts subject to subsection (2)(b). Such minimum valuation standards shall be:

(A) The commissioner's reserve valuation method for life insurance contracts, other than annuity contracts, subject to subsection (2)(b);

(B) The commissioners annuity reserve valuation method for annuity contracts subject to subsection (2)(b); and

(C) Minimum reserves for all other policies or contracts subject to subsection (2)(b).

(ii) Which policies or contracts or types of policies or contracts that are subject to the requirements of a principle-based valuation in subsection (12)(a) and the minimum valuation standards consistent with those requirements;

(iii) For policies and contracts subject to a principle-based valuation under subsection (12):

(A) Requirements for the format of reports to the commissioner under subsection (12)(b)(iii) and which shall include information necessary to determine if the valuation is appropriate and in compliance with this section;

(B) Assumptions shall be prescribed for risks over which the company does not have significant control or influence.

(C) Procedures for corporate governance and oversight of the actuarial function, and a process for appropriate waiver or modification of such procedures.

(iv) For policies not subject to a principle-based valuation under subsection (12) the minimum valuation standard shall either:

(A) Be consistent with the minimum standard of valuation prior to the operative date of the valuation manual; or

(B) Develop reserves that quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring.

(v) Other requirements, including, but not limited to, those relating to reserve methods, models for measuring risk, generation of economic scenarios, assumptions, margins, use of company experience, risk measurement, disclosure, certifications, reports, actuarial opinions and memorandums, transition rules and internal controls; and

(vi) The data and form of the data required under subsection (13), with whom the data must be submitted, and may specify other requirements including data analyses and reporting of analyses.

(e) In the absence of a specific valuation requirement or if a specific valuation requirement in the valuation manual is not, in the opinion of the commissioner, in compliance with this section, then the company shall, with respect to such requirements, comply with minimum valuation standards prescribed by the commissioner by regulation.

(f) The commissioner may engage a qualified actuary, at the expense of the company, to perform an actuarial examination of the company and opine on the appropriateness of any reserve assumption or method used by the company, or to review and opine on a company's compliance with any requirement set forth in this section. The commissioner may rely upon the opinion, regarding provisions contained within this section, of a qualified actuary engaged by the commissioner of another state, district or territory of the United States. As used in this paragraph, the term "engage" includes employment and contracting.

(g) The commissioner may require a company to change any assumption or method that in the opinion of the commissioner is necessary in order to comply with the requirements of the valuation manual or this section; and the company shall adjust the reserves as required by the commissioner. The commissioner may take other disciplinary action as permitted.

(12) **Requirements of a principle-based valuation:**

(a) A company must establish reserves using a principle-based valuation that meets the following conditions for policies or contracts as specified in the valuation manual:

(i) Quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring during the lifetime of the contracts. For polices or contracts with significant tail risk, reflects conditions appropriately adverse to quantify the tail risk.

(ii) Incorporate assumptions, risk analysis methods and financial models and management techniques that are consistent with, but not necessarily identical to, those utilized within the company's overall risk-assessment process, while recognizing potential differences in financial reporting structures and any prescribed assumptions or methods.

(iii) Incorporate assumptions that are derived in one (1) of the following manners:

(A) The assumption is prescribed in the valuation manual.

(B) For assumptions that are not prescribed, the assumptions shall:

1. Be established utilizing the company's available experience, to the extent it is relevant and statistically credible; or

2. To the extent that company data is not available, relevant, or statistically credible, be established utilizing other relevant, statistically credible experience.

(iv) Provide margins for uncertainty including adverse deviation and estimation error, such that the greater the uncertainty the larger the margin and resulting reserve.

(b) A company using a principle-based valuation for one or more policies or contracts subject to this subsection as specified in the valuation manual shall:

(i) Establish procedures for corporate governance and oversight of the actuarial valuation function consistent with those described in the valuation manual.

(ii) Provide to the commissioner and the board of directors an annual certification of the effectiveness of the internal controls with respect to the principle-based valuation. Such controls shall be designed to assure that all material risks inherent in the liabilities and associated assets subject to such valuation are included in the valuation, and that valuations are made in accordance with the valuation manual. The certification shall be based on the controls in place as of the end of the preceding calendar year.

(iii) Develop, and file with the commissioner upon request, a principle-based valuation report that complies with standards prescribed in the valuation manual.

(c) A principle-based valuation may include a prescribed formulaic reserve component.

(13) Experience reporting for policies in force on or after the operative date of the valuation manual.

(a) A company shall submit mortality, morbidity, policyholder behavior, or expense experience and other data as prescribed in the valuation manual.

(b) Experience reporting required by paragraph (a) of this subsection; actuarial memorandums required by subsection (9)(b); reserve examinations, and materials in support thereof, required by subsection (11)(f); materials supporting certification required by subsection (12)(b)(ii); and principle based reserve reports required by subsection (12)(b)(iii) are memorandum in support of the opinion and other material provided by the company to the commissioner in connection therewith, and are subject to subsection (9)(a)(iii)(H) of this section.

(14) **Sharing of information.**

(a) In order to assist in the performance of the commissioner's duties, the commissioner, at his option, may share information obtained pursuant to

this section with other state, federal and international regulatory agencies and with the NAIC and its affiliates and subsidiaries, with the Actuarial Board for Counseling and Discipline or its successor, and with state, federal and international law enforcement officials.

(b) The commissioner may receive documents, materials, data and other information, including otherwise confidential and privileged documents, materials, data or information, from the NAIC and its affiliates and subsidiaries, from regulatory or law enforcement officials of other foreign or domestic jurisdictions and from the Actuarial Board for Counseling and Discipline or its successor and shall maintain as confidential or privileged any document, material, data or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the data, document, material or other information, and such information shall be treated by all courts in this state as privileged and confidential as it would be treated under the laws of the jurisdiction that is the source of such data, document, material or other information.

(c) The commissioner may enter into agreements governing sharing and use of information consistent with this section.

(d) In this subsection (14) "regulatory agency," "law enforcement agency" and the "NAIC" include, but are not limited to, their employees, agents, consultants and contractors.

(15) **Single state exemption.**

(a) The commissioner may exempt specific product forms or product lines of a domestic company that is licensed and doing business only in Mississippi from the requirements of subsection (11) provided:

(i) The commissioner has issued an exemption in writing to the company and has not subsequently revoked the exemption in writing; and

(ii) The company computes reserves using assumptions and methods used prior to the operative date of the valuation manual in addition to any requirements established by the commissioner and promulgated by regulation.

(b) For any company granted an exemption under this subsection, subsections (3), (3-a), (3-b), (4), (4-a), (5), (6), (7), (8), (9) and (10) shall be applicable. With respect to any company applying this exemption, any reference to subsection (11) found in subsections (3), (3-a), (3-b), (4), (4-a), (5), (6), (7), (8), (9) and (10) shall not be applicable.

**HISTORY: Codes, 1942, § 5669-02; Laws, 1948, ch. 345, § 2; Laws, 1962, ch. 460, § 1; Laws, 1966, ch. 523, § 1; Laws, 1975, ch. 412, § 1; Laws, 1979, ch. 314, § 1; Laws, 1983, ch. 316, § 1; Laws, 1994, ch. 314, § 1; Laws, 2014, ch. 410, § 1, eff from and after July 1, 2014.**

**Amendment Notes —** The 2014 amendment added (1)(a), (1)(b), (2)(a), (2)(b), (10) through (15), and redesignated the remaining subsections accordingly; in (2)(a)(i), deleted "and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest, and methods (net level premium method or other) used in the calculation of such reserves" at the end of the first sentence, "herein"

following "valuation complies with the minimum standard", and substituted "in this section" for "and if the official of such other state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the Mississippi Insurance Commissioner when the certificate of the Mississippi Commissioner states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by law of that other state or jurisdiction," substituted "the commissioner" for "he" in two places, and inserted "issued on or after . . . the valuation manual," in the first sentence; in (3)(a)(iii), (3)(b), (3)(e), (3)(f), substituted "NAIC" for "National Association of Insurance Commissioners" and "which" for "that"; in (3)(b), deleted "all" preceding "industrial life insurance policies" at the beginning; added (3-a)(a) and renumbered former (3-a)(a) through (3-a)(e) as (3-a)(i) through (3-a)(v) and redesignated former undesignated paragraph under former (3-a)(e) as present (3-a)(b); in present (3-a)(ii) and (3-a)(iii), substituted "NAIC, which" for "National Association of Insurance Commissioners that"; and in present (3-a)(v), substituted "NAIC" for "National Association of Insurance Commissioners" and "which" for "that"; in (3-b)(a), deleted the "(i)" designator following "Applicability of this subsection." and redesignated former (3-b)(a)(i)(A) through (3-b)(a)(i)(D) as present (3-b)(a)(i) through (3-b)(a)(iv); in (3-b)(a), added "the following . . . in this subsection" to the end and in (3-b)(a)(i), (3-b)(a)(ii), and (3-b)(a)(iii), deleted "All" following each designator, deleted former (3-b)(a)(ii) and (3-b)(e)(ii), which read "[Blank]", deleted the "(i)" designator from (3-b)(e)(i) and substituted "NAIC" for "National Association of Insurance Commissioners"; in the second undesignated paragraph of (4)(b), clause (iv), substituted "subsection" for "section" at the end; in the first undesignated paragraph of (6), substituted "greater" for "higher" and "in the policies or contracts" for "herein", and in the second undesignated paragraph, deleted "such" preceding "company which at any time"; added (9)(a)(i) and redesignated former (9)(b) through (9)(d) as present (9)(a)(ii) through (9)(a)(iv); in present (9)(a)(ii)(B), substituted "subsection" for "section", in present (9)(a)(iii), substituted "subsection (9)(a)(ii)" for "paragraph (b)", added "required by subsection (9)(a)" to (9)(a)(iv), added present (9)(b), and deleted former (9)(e), which read "This subsection shall become operative with the filing of the December 31, 1994, annual statement."

## § 83-7-25. Standard nonforfeiture law.

(1) **Title:** This section shall be known as the standard nonforfeiture law for life insurance.

(1-a) Definitions: The term "operative date of the valuation manual" means the January 1 of the first calendar year that the valuation manual as defined in Section 83-7-23 is effective.

(2) **Nonforfeiture provisions:** In the case of policies issued on or after the operative date of this section as defined in subsection (10), no policy of life insurance, except as stated in subsection (9), shall be delivered or issued for delivery in this state unless it shall contain in substance the following provisions, or corresponding provisions which in the opinion of the Commissioner of Insurance are at least as favorable to the defaulting or surrendering policyholder as are the minimum requirements hereinafter specified and are essentially in compliance with subsection (8) of this section:

(a) That, in the event of default in any premium payment, the company will grant, upon proper request not later than sixty (60) days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such amount as may be hereinafter specified.

In lieu of such stipulated paid-up nonforfeiture benefit, the company may substitute, upon proper request not later than sixty (60) days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit which provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits.

(b) That, upon surrender of the policy within sixty (60) days after the due date of any premium payment in default after premiums have been paid for at least three (3) full years in the case of ordinary insurance or five (5) full years in the case of industrial insurance, the company will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as may be hereinafter specified.

(c) That a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than sixty (60) days after the due date of the premium in default.

(d) That, if the policy shall have become paid up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the company will pay, upon surrender of the policy within thirty (30) days after any policy anniversary, a cash surrender value of such amount as may be hereinafter specified.

(e) In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, a statement of the mortality table, interest rate, and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy. In the case of all other policies, a statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary either during the first twenty (20) policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the company on the policy.

(f) A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of the state in which the policy is delivered; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated

therein, a statement that such method of computation has been filed with the insurance supervisory official of the state in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy.

The company shall reserve the right to defer the payment of any cash surrender value for a period of six (6) months after demand therefor with surrender of the policy.

(3) **Computation of cash surrender value:** Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary, whether or not required by subsection (2), shall be an amount not less than the excess, if any, of the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of (1) the then present value of the adjusted premiums as defined in subsections (5), (5-a), (5-b) and (5-c), corresponding to premiums which would have fallen due on and after such anniversary, and (2) the amount of any indebtedness to the company on the policy.

Provided, however, that for any policy issued on or after the operative date of subsection (5-c) as defined therein, which provides supplemental life insurance or annuity benefits at the option of the insured and for an identifiable additional premium by rider or supplemental policy provision, the cash surrender value referred to in the first paragraph of this subsection shall be an amount not less than the sum of the cash surrender value as defined in such paragraph for an otherwise similar policy issued at the same age without such rider or supplemental policy provision and the cash surrender value as defined in such paragraph for a policy which provides only the benefits otherwise provided by such rider or supplemental policy provision.

Provided, further, that for any family policy issued on or after the operative date of subsection (5-c) as defined therein, which defines a primary insured and provides term insurance on the life of the spouse of the primary insured expiring before the spouse's age of seventy-one (71) years, the cash surrender value referred to in the first paragraph of this subsection shall be an amount not less than the sum of the cash surrender value as defined in such paragraph for an otherwise similar policy issued at the same age without such term insurance on the life of the spouse and the cash surrender value as defined in such paragraph for a policy which provides only the benefits otherwise provided by such term insurance on the life of the spouse.

Any cash surrender value available within thirty (30) days after any policy anniversary under any policy paid up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefit, whether or not required by subsection (2), shall be an amount not less than the present

value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by an indebtedness to the company on the policy.

(4) **Computation of paid-up nonforfeiture benefits:** Any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be at least equal to the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value which would have been required by this section in the absence of the condition that premiums shall have been paid for at least a specified period.

(5) **Calculation of adjusted premiums:** This subsection (5) shall not apply to policies issued on or after the operative date of subsection (5-c) as defined therein. Except as provided in the third paragraph of this subsection, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts stated in the policy as extra premiums to cover impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of (1) the then present value of the future guaranteed benefits provided for by the policy; (2) two percent (2%) of the amount of insurance, if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy; (3) forty percent (40%) of the adjusted premium for the first policy year; (4) twenty-five percent (25%) of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less. Provided, however, that in applying the percentages specified in (3) and (4) above, no adjusted premium shall be deemed to exceed four percent (4%) of the amount of insurance or level amount equivalent thereto. The date of issue of a policy for the purpose of this subsection shall be the date as of which the rated age of the insured is determined.

In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent level amount thereof for the purpose of this subsection shall be deemed to be the level amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy.

The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (a) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (b) the adjusted premiums for such term insurance, the foregoing items (a) and (b) being calculated separately and as specified in the first two (2) paragraphs of this subsection except

that, for the purposes of (2), (3) and (4) of the first such paragraph, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (b) shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (a).

Except as otherwise provided in subsections (5-a) and (5-b), all adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the Commissioners 1941 Standard Ordinary Mortality Table, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three (3) years younger than the actual age of the insured, and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest, not exceeding three and one-half percent (3-½%) per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than one hundred thirty percent (130%) of the rates of mortality according to such applicable table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present value may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

(5-a) **Calculation of adjusted premiums-ordinary policies:** This subsection (5-a) shall not apply to ordinary policies issued on or after the operative date of subsection (5-c) as defined therein. In the case of ordinary policies issued on or after the operative date of this subsection (5-a) as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioners 1958 Standard Ordinary Mortality Table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits provided that such rate of interest shall not exceed three and one-half percent (3-½%) per annum except that a rate of interest not exceeding four percent (4%) per annum may be used for policies issued on or after September 1, 1975, and prior to January 1, 1980, and a rate of interest not exceeding five and one-half percent (5-½%) per annum may be used for policies issued on or after January 1, 1980, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half percent (6-½%) per annum may be used and provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than six (6) years younger than the actual age of the insured. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1958 Extended Term Insurance Table. Provided, further,

that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

After the effective date of this subsection (5-a), any company may file with the commissioner a written notice of its election to comply with the provisions of this subsection after a specified date before January 1, 1966. After the filing of such notice, then upon such specified date (which shall be the operative date of this subsection for such company), this subsection shall become operative with respect to the ordinary policies thereafter issued by such company. If a company makes no such election, the operative date of this subsection for such company shall be January 1, 1966.

(5-b) **Calculation of adjusted premiums-industrial policies:** This subsection (5-b) shall not apply to industrial policies issued on or after the operative date of subsection (5-c) as defined therein. In the case of industrial policies issued on or after the operative date of this subsection (5-b) as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided that such rate of interest shall not exceed three and one-half percent (3-½%) per annum, except that a rate of interest not exceeding four percent (4%) per annum may be used for policies issued on or after September 1, 1975, and prior to January 1, 1980, and a rate of interest not exceeding five and one-half percent (5-½%) per annum may be used for policies issued on or after January 1, 1980, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half percent (6-½%) per annum may be used. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1961 Industrial Extended Term Insurance Table. Provided, further, that for insurance issued on a substandard basis, the calculations of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

After the effective date of this subsection (5-b), any company may file with the commissioner a written notice of its election to comply with the provisions of this subsection after a specified date before January 1, 1968. After the filing of such notice, then upon such specified date (which shall be the operative date of this subsection for such company), this subsection shall become operative with respect to the industrial policies thereafter issued by such company. If a company makes no such election, the operative date of this subsection for such company shall be January 1, 1968.

(5-c) **Calculation of adjusted premiums by the nonforfeiture net level premium method:**

(a) This subsection shall apply to all policies issued on or after the operative date of this subsection (5-c) as defined herein. Except as provided

in paragraph (g) of this subsection, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments or special hazards and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the date of issue of the policy, of all adjusted premiums shall be equal to the sum of (i) the then present value of the future guaranteed benefits provided for by the policy; (ii) one percent (1%) of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years; and (iii) one hundred twenty-five percent (125%) of the nonforfeiture net level premium as hereinafter defined. Provided, however, that in applying the percentage specified in (iii) above no nonforfeiture net level premium shall be deemed to exceed four percent (4%) of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years. The date of issue of a policy for the purpose of this subsection shall be the date as of which the rated age of the insured is determined.

(b) The nonforfeiture net level premium shall be equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one (1) per annum payable on the date of issue of the policy and on each anniversary of such policy on which a premium falls due.

(c) In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values shall initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any such change in the benefits or premiums the future adjusted premiums, nonforfeiture net level premiums and present values shall be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.

(d) Except as otherwise provided in paragraph (g) of this subsection, the recalculated future adjusted premiums for any such policy shall be such uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments and special hazards, and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all such future adjusted premiums shall be equal to the excess of (A) the sum of (i) the then present value of the then future guaranteed benefits provided for by the policy and (ii) the

additional expense allowance, if any, over (B) the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.

(e) The additional expense allowance, at the time of the change to the newly defined benefits or premiums, shall be the sum of (i) one percent (1%) of the excess, if positive, of the average amount of insurance at the beginning of each of the first ten (10) policy years subsequent to the change over the average amount of insurance prior to the change at the beginning of each of the first ten (10) policy years subsequent to the time of the most recent previous change, or, if there has been no previous change, the date of issue of the policy; and (ii) one hundred twenty-five percent (125%) of the increase, if positive, in the nonforfeiture net level premium.

(f) The recalculated nonforfeiture net level premium shall be equal to the result obtained by dividing (A) by (B) where:

(A) Equals the sum of

(i) The nonforfeiture net level premium applicable prior to the change times the present value of an annuity of one (1) per annum payable on each anniversary of the policy on or subsequent to the date of the change on which a premium would have fallen due had the change not occurred, and

(ii) The present value of the increase in future guaranteed benefits provided for by the policy, and

(B) Equals the present value of an annuity of one (1) per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.

(g) Notwithstanding any other provisions of this subsection to the contrary, in the case of a policy issued on a substandard basis which provides reduced graded amounts of insurance so that, in each policy year, such policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis which provides higher uniform amounts of insurance, adjusted premiums and present values for such substandard policy may be calculated as if it were issued to provide such higher uniform amounts of insurance on the standard basis.

(h) All adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of (i) the Commissioners 1980 Standard Ordinary Mortality Table or (ii) at the election of the insurer for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with ten-year select mortality factors; shall for all policies of industrial insurance be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table; and shall for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this subsection for policies issued in that calendar year. Provided, however, that:

(i) At the option of the company, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this subsection, for policies issued in the immediately preceding calendar year.

(ii) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by subsection (2), shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any.

(iii) A company may calculate the amount of any guaranteed paid-up nonforfeiture benefit including any paid-up additions under the policy on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values.

(iv) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1980 Extended Term Insurance Table for policies of ordinary insurance and not more than the Commissioners 1961 Industrial Extended Term Insurance Table for policies of industrial insurance.

(v) For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of the aforementioned tables.

(vi) For policies issued prior to the operative date of the valuation manual, any commissioner's standard ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1980 Standard Ordinary Mortality Table with or without ten-year select mortality factors or for the Commissioners 1980 Extended Term Insurance Table. For policies issued on or after the operative date of the valuation manual, the valuation manual shall provide the standard ordinary mortality table for use in determining the minimum nonforfeiture standard that may be substituted for the Commissioners 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or for the Commissioners 1980 Extended Term Insurance Table. If the commissioner approves by regulation any commissioner's standard ordinary mortality table adopted by the National Association of Insurance Commissioners for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual, then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual.

(vii) For policies issued prior to the operative date of the valuation manual, any commissioner's standard industrial mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1961 Standard Industrial Mortality Table or the Commissioners 1961 Industrial Extended Term Insurance Table. For policies issued on or after the operative date of the valuation manual, the

valuation manual shall provide the Commissioner's Standard Mortality Table for use in determining the minimum nonforfeiture standard that may be substituted for the Commissioners 1961 Standard Industrial Mortality Table or the Commissioners 1961 Industrial Extended Term Insurance Table. If the commissioner approves by regulation any commissioner's standard industrial mortality table adopted by the National Association of Insurance Commissioners for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual.

(i) The nonforfeiture interest rate is defined below:

(i) For policies issued prior to the operative date of the valuation manual, the nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred twenty-five percent (125%) of the calendar year statutory valuation interest rate for such policy as defined in the Standard Valuation Law (Section 83-7-23), rounded to the nearer one-quarter of one percent (¼ of 1%); provided, however, that the nonforfeiture interest rate shall not be less than four percent (4%).

(ii) For policies issued on and after the operative date of the valuation manual the nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be provided by the valuation manual.

(j) Notwithstanding any other provision in this section to the contrary, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form which involves only a change in the interest rate or mortality table used to compute nonforfeiture values shall not require refiling of any other provisions of that policy form.

(k) After the effective date of this subsection (5-c), any company may file with the commissioner a written notice of its election to comply with the provision s of this subsection after a specified date before January 1, 1989, which shall be the operative date of this subsection for such company. If a company makes no such election, the operative date of this subsection for such company shall be January 1, 1989.

(6) **Nonforfeiture benefits for indeterminate premium plans:** In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance which is of such a nature that minimum values cannot be determined by the methods described in subsection (2), (3), (4), (5), (5-a), (5-b) or (5-c) herein, then:

(a) The commissioner must be satisfied that the benefits provided under the plan are substantially as favorable to policyholders and insured as the minimum benefits otherwise required by subsection (2), (3), (4), (5), (5-a), (5-b) or (5-c) herein;

(b) The commissioner must be satisfied that the benefits and the

pattern of premiums of that plan are not such as to mislead prospective policyholders or insureds;

(c) The cash surrender values and paid-up nonforfeiture benefits provided by such plan must not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this Standard Nonforfeiture Law for life insurance, as determined by regulations promulgated by the commissioner.

(7) **Proration of values; net value of paid-up additions:** Any cash surrender value and any paid-up nonforfeiture benefits, available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in subsections (3), (4), (5), (5-a), (5-b) and (5-c) may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the amounts used to provide such additions. Notwithstanding the provisions of subsection (3), additional benefits payable (i) in the event of death or dismemberment by accident or accidental means, (ii) in the event of total and permanent disability, (iii) as reversionary annuity or deferred reversionary annuity benefits, (iv) as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this section would not apply, (v) as term insurance on the life of a parent of the child, if such term insurance expires before the child's age is twenty-six (26) years, is uniform in amount after the child's age is one (1) year, and has not become paid up by reason of the death of a parent of the child, and (vi) as other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

(8) **Consistency of progression of cash surrender values with increasing policy duration:** This subsection (8), in addition to all other applicable subsections of this section, shall apply to all policies issued on or after January 1, 1987. Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary shall be in an amount which does not differ by more than two-tenths of one percent ($^2/_{10}$ of 1%) of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years, from the sum of (a) the greater of zero and the basic cash value hereinafter specified, and (b) the present value of any existing paid-up additions less the amount of any indebtedness to the company under the policy.

The basic cash value shall be equal to the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the company, if there had been no default, less the then

present value of the nonforfeiture factors, as hereinafter defined, corresponding to premiums which would have fallen due on and after such anniversary. Provided, however, that the effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in subsection (3), shall be the same as are the effects specified in subsection (3), on the cash surrender values defined in that subsection.

The nonforfeiture factor for each policy year shall be an amount equal to a percentage of the adjusted premium for the policy year, as defined in subsection (5-c). Except as is required by the next succeeding sentence of this paragraph, such percentage:

(a) Must be the same percentage for each policy year between the second policy anniversary and the later of (i) the fifth policy anniversary and (ii) the first policy anniversary at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least two-tenths of one percent ($^{2}/_{10}$ of 1%) in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years; and

(b) Must be such that no percentage after the later of the two (2) policy anniversaries specified in the preceding paragraph (a) may apply to fewer than five (5) consecutive policy years.

Provided, that no basic cash value may be less than the value which would be obtained if the adjusted premiums for the policy, as defined in subsection (5-c), were substituted for the nonforfeiture factors in the calculation of the basic cash value.

All adjusted premiums and present values referred to in this subsection shall for a particular policy be calculated on the same mortality and interest bases as are used in demonstrating the policy's compliance with the other subsections of this section. The cash surrender values referred to in this subsection shall include any endowment benefits provided for by the policy.

Any cash surrender value available other than in the event of default in a premium payment due on a policy anniversary, and the amount of any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment shall be determined in manners consistent with the manners specified for determining the analogous minimum amounts in subsections (2), (3), (4), (5-c) and (7). The amounts of any cash surrender values and of any paid-up nonforfeiture benefits granted in connection with additional benefits such as those listed as items (i) through (vi) in subsection (7) shall conform with the principles of this subsection (8).

(9) **Exceptions:** This section shall not apply to any of the following:

(a) Reinsurance,

(b) Group insurance,

(c) Pure endowment,

(d) Annuity or reversionary annuity contract,

(e) Term policy of uniform amount, which provides no guaranteed nonforfeiture or endowment benefits, or renewal thereof, of twenty (20) years or less expiring before age seventy-one (71), for which uniform premiums are payable during the entire term of the policy,

(f) Term policy of decreasing amount, which provides no guaranteed nonforfeiture or endowment benefits, on which each adjusted premium, calculated as specified in subsections (5), (5-a), (5-b) and (5-c), is less than the adjusted premium so calculated on a term policy of uniform amount, or renewal thereof, which provides no guaranteed nonforfeiture or endowment benefits, issued at the same age and for the same initial amount of insurance and for a term of twenty (20) years or less expiring before age seventy-one (71), for which uniform premiums are payable during the entire term of the policy,

(g) Policy, which provides no guaranteed nonforfeiture or endowment benefits, for which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at the beginning of any policy year, calculated as specified in subsections (3), (4), (5), (5-a), (5-b) and (5-c), exceeds two and one-half percent (2-½%) of the amount of insurance at the beginning of the same policy year, nor

(h) Policy which shall be delivered outside this state through an agent or other representative of the company issuing the policy.

For purposes of determining the applicability of this section, the age at expiry for a joint term life insurance policy shall be the age at expiry of the oldest life.

(10) **Effective date:** After the effective date of this section, any company may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before April 1, 1948. After the filing of such notice, then upon such specified date (which shall be the operative date for such company) this section shall become operative with respect to the policies thereafter issued by such company. If a company makes no such election, the operative date of this section for such company shall be April 1, 1948.

**HISTORY: Codes, 1942, § 5669-03; Laws, 1948, ch. 345, § 3; Laws, 1962, ch. 460, § 2; Laws, 1966, ch. 523, § 2; Laws, 1975, ch. 412, § 2; Laws, 1979, ch. 314, § 2; Laws, 1983, ch. 316, § 2; Laws, 2014, ch. 410, § 2, eff from and after July 1, 2014.**

**Amendment Notes —** The 2014 amendment added (1-a), (5-c)(i)(i), and (5-c)(i)(ii); in (5), last undesignated paragraph, deleted "and" following "may be not more than one hundred"; in (5-c)(j), substituted "section" for "code"; in (6), substituted "subsection" for "subsections"; in (8), substituted "section" for "law" in two places, "a" for "an", and "paragraph" for "item", inserted "sub" preceding "section" in two places and additional language throughout; in (9) and (10), substituted "section" for "chapter" throughout and "April" for "January" twice in (10).

## UNCLAIMED LIFE INSURANCE BENEFITS ACT

Sec.

Sec.


## § 83-7-301. Short title.

Sections 83-7-301 through 83-7-313 shall be known as the "Unclaimed Life Insurance Benefits Act."

**HISTORY: Laws, 2014, ch. 431, § 1, eff from and after July 1, 2015.**

## § 83-7-303. Purpose.

Sections 83-7-301 through 83-7-313 confirm the applicability of the escheat and unclaimed property statutes of Mississippi to any method of payment for life insurance death benefits regulated by the Mississippi Department of Insurance, and establish the sole standards by which such escheat and unclaimed property statutes are applicable to such payments.

**HISTORY: Laws, 2014, ch. 431, § 2, eff from and after July 1, 2015.**

## § 83-7-305. Definitions.

As used in Sections 83-7-301 through 83-7-313:

(a) "Account owner" means the owner of a retained asset account who is a resident of this state.

(b) "Annuity" means an annuity contract issued in this state. The term "annuity" shall not include any annuity contract used to fund an employment-based retirement plan or program where the insurer takes direction from the plan sponsor and plan administrator.

(c) "Death master file" means the United States Social Security Administration's Death Master File or any other database or service that is at least as comprehensive as the United States Social Security Administration's Death Master File for determining that a person has reportedly died.

(d) "Death master file match" means a search of the death master file that results in a match of a person's name and social security number, or the name and date of birth.

(e) "Insurer" means a life insurance company as defined in Section 83-7-1.

(f) "Knowledge of death" shall, for purposes of Sections 83-7-301 through 83-7-313, for purposes of Section 83-7-6, and for purposes of establishing the presumption of abandonment of funds held or owing by a life insurance corporation under Section 89-12-7 mean (i) receipt of an original or valid copy of a certified death certificate, or (ii) a death master file match validated by a secondary source by the insurer.

(g) "Person" means the policy owner, insured, annuity owner, annuitant

or account owner, as applicable under the policy, annuity, or retained asset account subject to Sections 83-7-301 through 83-7-313.

(h) "Policy" means any policy or certificate of life insurance issued in this state; except the term "policy" shall not include (i) any policy or certificate of life insurance that provides a death benefit under an employee benefit plan subject to The Employee Retirement Income Security Act of 1974 [29 USC 1002], as periodically amended, or under any federal employee benefit program, (ii) any policy or certificate of life insurance that is used to fund a preneed funeral contract or prearrangement, (iii) any policy or certificate of credit life or accidental death insurance, (iv) any policy or certificate of industrial life insurance, or (v) any policy issued to a group master policyholder for which the insurer does not provide record keeping services.

(i) "Record keeping services" means those circumstances under which the insurer has agreed with a group policyholder to be responsible for obtaining, maintaining and administering in its own systems information about each individual insured under an insured's group insurance contract (or a line of coverage thereunder), at least the following information: (i) social security number or name and date of birth, (ii) beneficiary designation information, (iii) coverage eligibility, (iv) benefit amount, and (v) premium payment status.

**HISTORY: Laws, 2014, ch. 431, § 3, eff from and after July 1, 2015.**

## § 83-7-307. Insurer conduct.

(1) An insurer shall perform a comparison of its in-force policies, annuities and retained asset accounts issued in this state against a death master file, on at least a semiannual basis, to identify potential death master file matches.

(a) An insurer may comply with the requirements of this section by using the full death master file once annually and using the death master file update files for the remaining comparisons in that year.

(b) Nothing in this section shall limit the insurer from requesting a valid death certificate as part of any claims validation process.

(2) If an insurer obtains knowledge of the death of a person, then the insurer shall within ninety (90) days:

(a) Complete a good-faith effort, which shall be documented by the insurer, to confirm the death of the person against other available records and information;

(b) Review its records to determine whether the deceased person had purchased any other products with the insurer;

(c) Determine whether benefits may be due in accordance with any applicable policy, annuity or retained asset account issued or assumed by the insurer; and

(d) If the beneficiary or other authorized representative has not communicated with the insurer within the ninety-day period, take reasonable

steps, which shall be documented by the insurer, to locate and contact the beneficiary or beneficiaries or other authorized representative on any such policy, annuity or retained asset account, including, but not limited to, sending the beneficiary information regarding the insurer's claims process, including the need to provide an official death certificate if applicable under the policy, annuity or retained asset account.

(e) In the event the insurer is unable to confirm the death of a person following a death master file match, an insurer may consider such policy, annuity or retained asset account to be in force in accordance with its terms.

(3) An insurer shall not be required to do the comparison under this section or take the steps described in this section with respect to policies, annuities or retained asset accounts issued and delivered prior to July 1, 2015.

(4) To the extent permitted by law, an insurer may disclose minimum necessary personal information about a person or beneficiary to a person who the insurer reasonably believes may be able to assist the insurer in locating the beneficiary or a person otherwise entitled to payment of the policy, annuity or retained asset account proceeds.

(5) An insurer or its service provider shall not charge any beneficiary or other authorized representative for any fees or costs associated with a death master file search or verification of a death master file match conducted pursuant to this section.

(6) The benefits from a policy, annuity or retained asset account, plus any applicable accrued contractual interest shall first be payable to the designated beneficiaries or owners and in the event said beneficiaries or owners cannot be found, shall escheat to the state as unclaimed property pursuant to Section 89-12-7. Interest payable under Section 83-7-6 shall not be payable as unclaimed property under Section 89-12-7(1) or (3).

(7) The Commissioner of Insurance shall have exclusive authority and jurisdiction on behalf of the State Treasurer to examine the records of insurers to determine if they have complied with the Mississippi escheat and unclaimed property laws, and may adopt such rules and regulations as may be reasonably necessary to implement the provisions of Sections 83-7-301 through 83-7-313.

(8) The Commissioner of Insurance may, in his or her reasonable discretion, make an order:

(a) Limiting an insurer's death master file comparisons required under subsection (1) to the insurer's electronic searchable files or approving a plan and timeline for conversion of the insurer's files to electronic searchable files;

(b) Exempting an insurer from the death master file comparisons required under subsection (1) or permitting an insurer to perform such comparisons less frequently than semiannually upon a demonstration of financial hardship by the insurer; or

(c) Phasing-in compliance with this section according to a plan and timeline approved by the Commissioner of Insurance.

(9) A violation of Sections 83-7-301 through 83-7-313 shall be subject to the penalty provisions set forth in Section 83-5-17, as well as other penalty provisions under applicable law. Nothing herein shall be construed to create or

imply a private cause of action for a violation of Sections 83-7-301 through 83-7-313.

**HISTORY: Laws, 2014, ch. 431, § 4, eff from and after July 1, 2015.**

## § 83-7-309. Insurer unclaimed property reporting.

In the event that an insurer: (a) has identified a person as deceased through a death master file match through a search described in Section 83-7-307(1) or other information source, (b) has validated such information through a secondary information source, and (c) is unable to locate a beneficiary under the policy, annuity or retained asset account after conducting reasonable search efforts during the period of up to one (1) year after the insurer's validation of the death master file match, or if no beneficiary, if the person, as applicable for unclaimed reporting purposes, has a last-known address in this state, then the insurer is authorized to report and remit the proceeds of such policy, annuity or retained asset account due to the state on an early reporting basis, without further notice or consent by the state, after attempting to contact such beneficiary pursuant to Section 89-12-7. Once reported and proceeds are remitted, the insurer shall be relieved and indemnified from any and all additional liability to any person relating to the proceeds reported and remitted, including, but not limited to, any liability under for all proceeds reported and remitted to the state pursuant to Sections 83-7-301 through 83-7-313. This indemnification from liability shall be in addition to any other protections provided by law. Any proceeds remitted to the state pursuant to Sections 83-7-301 through 83-7-313 shall be deposited in the Abandoned Property Fund maintained by the State Treasurer.

**HISTORY: Laws, 2014, ch. 431, § 5, eff from and after July 1, 2015.**

## § 83-7-311. Limitation on promulgation of rules or regulations that impose additional duties on insurers beyond those set out in Sections 83-7-301 through 83-7-313.

Neither the Commissioner of Insurance nor the State Treasurer shall promulgate rules, regulations or issue bulletins that impose, or interpret Sections 83-7-301 through 83-7-313 to impose, additional duties and obligations on insurers beyond those set forth in Sections 83-7-301 through 83-7-313, or otherwise attempt to expand the requirements of Sections 83-7-301 through 83-7-313.

**HISTORY: Laws, 2014, ch. 431, § 6, eff from and after July 1, 2015.**

## § 83-7-313. Effect of certain agreements between insurers and Commissioner of Insurance or State Treasurer.

In the event that any resolution agreement, regulatory settlement agreement, or a voluntary disclosure agreement between an insurer who has used

the death master file to terminate annuity payments but not to locate life beneficiaries and the Commissioner of Insurance or the State Treasurer conflicts with Sections 83-7-301 through 83-7-313, the terms of the agreement shall supersede Sections 83-7-301 through 83-7-313.

**HISTORY: Laws, 2014, ch. 431, § 7, eff from and after July 1, 2015.**

# CHAPTER 9.

# ACCIDENT, HEALTH AND MEDICARE SUPPLEMENT INSURANCE



## ACCIDENT AND HEALTH INSURANCE



### § 83-9-3. Form of policy; commissioner's fees; expedited form and rate review procedure; funding of agency expenses; deposit of monies into State General Fund.

(1) No policy of accident and sickness insurance shall be delivered or issued for delivery to any person in this state unless:

(a) The entire money and other considerations therefor are expressed therein; and

(b) The time at which the insurance takes effect and terminates is expressed therein; and

(c) It purports to insure only one (1) person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any two (2) or more eligible members of that family, including husband, wife, dependent children or any children under a specified age which shall not exceed nineteen (19) years, and any other person dependent upon the policyholder; and

(d) The style, arrangement and overall appearance of the policy give no undue prominence to any portion of the text, and unless every printed portion of the text of the policy and of any endorsements or attached papers is plainly printed in lightfaced type of a style in general use, the size of which shall be uniform and not less than ten-point with a lowercase unspaced alphabet length not less than one-hundred-twenty-point (the "text" shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description if any, and captions and subcaptions); and

(e) The exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in Section 83-9-5, are printed, at the insurer's option, either with the benefit provision to which they apply, or under an appropriate caption such as "Exceptions" or "Exceptions and Reductions," provided that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies; and

(f) Each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof; and

(g) It contains no provision purporting to make any portion of the charter, rules, constitution or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the commissioner.

(2) No individual or group policy covering health and accident insurance (including experience-rated insurance contracts, indemnity contracts, self-insured plans and self-funded plans), or any group combinations of these coverages, shall be issued by any commercial insurer doing business in this state which, by the terms of such policy, limits or excludes payment because the individual or group insured is eligible for or is being provided medical assistance under the Mississippi Medicaid Law. Any such policy provision in violation of this section shall be invalid.

(3) No individual or group policy covering health and accident insurance (including experience-rated insurance contracts, indemnity contracts, self-insured plans and self-funded plans) or any group combinations of these coverages, shall be issued by any commercial insurer doing business in this state, which, by the terms of such policy, limits or restricts the insured's ability

to assign the insured's benefits under the policy to a licensed health care provider that provides health care services to the insured. Commercial insurers doing business in this state shall honor an assignment for a period of one (1) year starting from the initial date of an assignment. Any such policy provision in violation of this subsection shall be invalid.

(4) If any policy is issued by an insurer domiciled in this state for delivery to a person residing in another state, and if the official having responsibility for the administration of the insurance laws of such other state shall have advised the commissioner that any such policy is not subject to approval or disapproval by such official, the commissioner may, by ruling, require that such policy meet the standards set forth in subsection (1) of this section and in Section 83-9-5.

(5) The commissioner shall collect and pay into the special fund in the State Treasury designated as the "Insurance Department Fund" the following fees for services provided under this section:

| FORM | FEE |
|---|---|
| Each individual policy contract, including revisions ..... | $15.00 |
| Each group master policy or contract, including revisions ..... | 15.00 |
| Each rider, endorsement or amendment, etc ..... | 10.00 |
| Each insurance application where written application is required and is to be made a part of the policy or contract ..... | 10.00 |
| Each questionnaire ..... | 7.00 |
| Charge for resubmission where payment is not included with original submission ..... | 5.00 |

Additional charge for tentative approval same as above.

(6) In order to expedite and become more efficient in reviewing and approving accident and health form and rate filings, the commissioner may establish an expedited form and rate review procedure whereby insurers may elect to pay reasonable actuarial fees directly to a department-approved actuarial service in exchange for an expedited review of form and rate filings by the actuarial service. The commissioner may make such reasonable rules and regulations concerning the expedited procedure, and may set reasonable fees for the actuarial services provided. This provision shall not abridge any other authority granted to the commissioner by law, including the authority to collect the filing fees prescribed by this section.

(7) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(8) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

**HISTORY: Codes, 1942, § 5687-02; Laws, 1956, ch. 330, § 2; Laws, 1988, ch. 526, § 4; Laws, 1989, ch. 408, § 1; Laws, 1991, ch. 354 § 1; Laws, 1997, ch. 324, § 3; Laws, 2008, ch. 432, § 2; Laws, 2013, ch. 302, § 1; Laws, 2014, ch. 404, § 1; Laws, 2016, ch. 312, § 1; Laws, 2016, ch. 459, § 28, eff from and after July 1, 2016;**

**brought forward without change, Laws, 2020, ch. 420, § 2, eff from and after July 1, 2020.**

**Joint Legislative Committee Note —** Section 1 of ch. 312 Laws of 2016, effective from and after July 1, 2016 (approved April 4, 2016), amended this section. Section 28 of ch. 459, Laws of 2016, effective from and after July 1, 2016 (approved May 6, 2016), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 5, 2016, meeting of the Committee.

**Editor's Notes —** Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

**Amendment Notes —** The 2013 amendment, added (3), redesignated former (3) through (5), as present (4) through (6).

The 2014 amendment inserted the second to last sentence in (3).

The first 2016 amendment (ch. 312) deleted "or until the insured revokes the assignment, whichever occurs first" from the end of the next-to-last sentence of (3).

The second 2016 amendment (ch. 459) added (7) and (8).

The 2020 amendment brought the section forward without change.

**Cross References —** Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

## § 83-9-4. Commissioner may disapprove policy form, amendatory rider or endorsement currently in effect under certain circumstances; procedure; applicability.

(1) The Commissioner of Insurance may disapprove a policy form, amendatory rider or endorsement currently in effect if the commissioner finds that a portion or all of the policy form, amendatory rider or endorsement:

(a) Is in any respect in violation of any state or federal laws; or

(b) Contains or incorporates by reference any inconsistent, ambiguous or misleading clauses or exceptions and conditions.

(2) If the commissioner disapproves a policy form, amendatory rider or endorsement currently in effect, the commissioner shall issue an order only after a hearing held on not less than thirty (30) days written notice to the filing insurer. The insurer may waive the hearing. The commissioner shall issue an order within thirty (30) days after the close of the hearing or within thirty (30) days after the filing of a waiver of hearing and shall specify in what respects the policy form, amendatory rider or endorsement fails to meet the requirements of this section. The commissioner may extend the thirty-day period for issuance of an order for an additional thirty (30) days.

(3) This section may apply to any health insurance policy or employee health benefit plan which is delivered, renewed, issued for delivery, or otherwise contracted for in this state, but shall not apply to any policy of disability income insurance or long-term care insurance.

(4) The commissioner may promulgate rules and regulations necessary to carry out the provisions of this section.

**HISTORY: Laws, 2014, ch. 405, § 1, eff from and after passage (approved Mar. 19, 2014).**

## § 83-9-5. Policy provisions.

(1) **Required provisions.** Except as provided in subsection (3) of this section, each such policy delivered or issued for delivery to any person in this state shall contain the provisions specified in this subsection in the words in which the same appear in this section. However, the insurer may, at its option, substitute for one or more of such provisions, corresponding provisions of different wording approved by the commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary. Such provisions shall be preceded individually by the caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

As used in this section, the term "insurer" means a health maintenance organization, an insurance company or any other entity responsible for the payment of benefits under a policy or contract of accident and sickness insurance; however, the term "insurer" shall not mean a liquidator, rehabilitator, conservator or receiver or third-party administrator of any health maintenance organization, insurance company or other entity responsible for the payment of benefits which is in liquidation, rehabilitation or conservation proceedings, nor shall it mean any responsible guaranty association. Further, no cause of action shall accrue against a liquidator, rehabilitator, conservator or receiver or third-party administrator of any health maintenance organization, insurance company or other entity responsible for the payment of benefits which is in liquidation, rehabilitation or conservation proceedings or any responsible guaranty association under paragraph (h)3 of this subsection or any policy provision in accordance therewith.

(a) A provision as follows:

Entire contract; changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions.

(b) A provision as follows:

Time limit on certain defenses:

1. After two (2) years from the date of issue of this policy, no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such two-year period.

(The foregoing policy provision shall not be so construed as to effect any legal requirement for avoidance of a policy or denial of a

claim during such initial two-year period, nor to limit the application of subsection (2)(a) and (2)(b) of this section in the event of misstatement with respect to age or occupation.)

(A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (1) until at least age fifty (50) or, (2) in the case of a policy issued after age forty-four (44), for at least five (5) years from its date of issue, may contain in lieu of the foregoing the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption "INCONTESTABLE":

After this policy has been in force for a period of two (2) years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements in the application.)

2. No claim for loss incurred or disability (as defined in the policy) commencing after two (2) years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.

(c) A provision as follows:

Grace period:

A grace period of seven (7) days for weekly premium policies, ten (10) days for monthly premium policies and thirty-one (31) days for all other policies will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force.

(A policy which contains a cancellation provision may add, at the end of the above provision, "subject to the right of the insurer to cancel in accordance with the cancellation provision hereof."

A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision, "unless not less than five (5) days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.")

(d) A provision as follows:

Reinstatement:

If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy. However, if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval,

upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten (10) days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty (60) days prior to the date of reinstatement. (The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age fifty (50) or, (2) in the case of a policy issued after age forty-four (44), for at least five (5) years from its date of issue.)

(e) A provision as follows:

Notice of claim:

Written notice of claim must be given to the insurer within thirty (30) days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at _____ (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer.

(In a policy providing a loss of time benefit which may be payable for at least two (2) years, an insurer may, at its option, insert the following between the first and second sentences of the above provision: "Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two (2) years, he shall, at least once in every six (6) months after having given notice of claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of six (6) months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability, in whole or in part, by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six (6) months preceding the date on which such notice is actually given.")

(f) A provision as follows:

Claim forms:

The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of

loss. If such forms are not furnished within fifteen (15) days after the giving of such notice, the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made.

(g) A provision as follows:

Proofs of loss:

Written proof of loss must be furnished to the insurer at its said office, in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss, within ninety (90) days after the termination of the period for which the insurer is liable, and in case of claim for any other loss, within ninety (90) days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate or reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one (1) year from the time proof is otherwise required.

(h) A provision as follows:

Time of payment of claims:

1. All benefits payable under this policy for any loss, other than loss for which this policy provides any periodic payment, will be paid within twenty-five (25) days after receipt of due written proof of such loss in the form of a clean claim where claims are submitted electronically, and will be paid within thirty-five (35) days after receipt of due written proof of such loss in the form of clean claim where claims are submitted in paper format. Benefits due under the policies and claims are overdue if not paid within twenty-five (25) days or thirty-five (35) days, whichever is applicable, after the insurer receives a clean claim containing necessary medical information and other information essential for the insurer to administer preexisting condition, coordination of benefits and subrogation provisions. A "clean claim" means a claim received by an insurer for adjudication and which requires no further information, adjustment or alteration by the provider of the services or the insured in order to be processed and paid by the insurer. A claim is clean if it has no defect or impropriety, including any lack of substantiating documentation, or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under this provision. A clean claim includes resubmitted claims with previously identified deficiencies corrected. Errors, such as system errors, attributable to the insurer, do not change the clean claim status.

A clean claim does not include any of the following:

a. A duplicate claim, which means an original claim and its duplicate when the duplicate is filed within thirty (30) days of the original claim;

b. Claims which are submitted fraudulently or that are based upon material misrepresentations;

c. Claims that require information essential for the insurer to administer preexisting condition, coordination of benefits or subrogation provisions; or

d. Claims submitted by a provider more than thirty (30) days after the date of service; if the provider does not submit the claim on behalf of the insured, then a claim is not clean when submitted more than thirty (30) days after the date of billing by the provider to the insured.

Not later than twenty-five (25) days after the date the insurer actually receives an electronic claim, the insurer shall pay the appropriate benefit in full, or any portion of the claim that is clean, and notify the provider (where the claim is owed to the provider) or the insured (where the claim is owed to the insured) of the reasons why the claim or portion thereof is not clean and will not be paid and what substantiating documentation and information is required to adjudicate the claim as clean. Not later than thirty-five (35) days after the date the insurer actually receives a paper claim, the insurer shall pay the appropriate benefit in full, or any portion of the claim that is clean, and notify the provider (where the claim is owed to the provider) or the insured (where the claim is owed to the insured) of the reasons why the claim or portion thereof is not clean and will not be paid and what substantiating documentation and information is required to adjudicate the claim as clean. Any claim or portion thereof resubmitted with the supporting documentation and information requested by the insurer shall be paid within twenty (20) days after receipt.

For purposes of this provision, the term "pay" means that the insurer shall either send cash or a cash equivalent by United States mail, or send cash or a cash equivalent by other means such as electronic transfer, in full satisfaction of the appropriate benefit due the provider (where the claim is owed to the provider) or the insured (where the claim is owed to the insured). To calculate the extent to which any benefits are overdue, payment shall be treated as made on the date a draft or other valid instrument was placed in the United States mail to the last known address of the provider (where the claim is owed to the provider) or the insured (where the claim is owed to the insured) in a properly addressed, postpaid envelope, or, if not so posted, or not sent by United States mail, on the date of delivery of payment to the provider or insured.

2. Subject to due written proof of loss, all accrued benefits for loss for which this policy provides periodic payment will be paid _____ (insert period for payment which must not be less frequently than monthly), and any balance remaining unpaid upon the termination of liability will be paid within thirty (30) days after receipt of due written proof.

3. If the claim is not denied for valid and proper reasons by the end of the applicable time period prescribed in this provision, the insurer must pay the provider (where the claim is owed to the provider) or the insured (where the claim is owed to the insured) interest on accrued benefits at the rate of three percent (3%) per month accruing from the day after payment was due on the amount of the benefits that remain unpaid until the claim is finally settled or adjudicated. Whenever interest due pursuant to this provision is less than One Dollar ($1.00), such amount shall be credited to the account of the person or entity to whom such amount is owed. The provisions of this subparagraph 3 shall not apply to any claims or benefits owed under Medicare Advantage plans or Medicare Advantage Prescription Drug plans.

4. In the event the insurer fails to pay benefits when due, the person entitled to such benefits may bring action to recover such benefits, any interest which may accrue as provided in subparagraph 3 of this paragraph (h) and any other damages as may be allowable by law. If it is determined in such action that the insurer acted in bad faith as evidenced by a repeated or deliberate pattern of failing to pay benefits and/or claims when due, the person entitled to such benefits (health care provider or insured) shall be entitled to recover damages in an amount up to three (3) times the amount of the benefits that remain unpaid until the claim is finally settled or adjudicated.

(i) A provision as follows:

Payment of claims:

Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured. When payments of benefits are made to an insured directly for medical care or services rendered by a health care provider, the health care provider shall be notified of such payment. The notification requirement shall not apply to a fixed-indemnity policy, a limited benefit health insurance policy, medical payment coverage or personal injury protection coverage in a motor vehicle policy, coverage issued as a supplement to liability insurance or workers' compensation. If the insured provides the insurer with written direction that all or a portion of any indemnities or benefits provided by the policy be paid to a licensed health care provider rendering hospital, nursing, medical or surgical services, then the insurer shall pay directly the licensed health care provider rendering such services. That payment shall be considered payment in full to the provider, who may not bill or collect from the insured any amount above that payment, other than the deductible, coinsurance, copayment or other charges for equipment or services

requested by the insured that are noncovered benefits. Any dispute between a provider and the insured arising under these provisions regarding assignment of benefits and billing may be resolved by the Commissioner of Insurance. The Commissioner of Insurance shall adopt any rules and regulations necessary to enforce these provisions regarding assignment of benefits and billing.

(The following provision may be included with the foregoing provision at the option of the insurer: "If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding $_____ (insert an amount which must not exceed One Thousand Dollars ($1,000.00)), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment.")

(j) A provision as follows:

Physical examinations:

The insurer at his own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder.

(k) A provision as follows:

Legal actions:

No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty (60) days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three (3) years after the time written proof of loss is required to be furnished.

(*l*) A provision as follows:

Change of beneficiary:

Unless the insured makes an irrevocable designation of beneficiary, the right to change the beneficiary is reserved to the insured, and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy, or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

(The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.)

(2) **Other provisions.** Except as provided in subsection (3) of this section, no such policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth below unless such provisions are in the words in which the same appear in this section. However, the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the commissioner which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate

caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

(a) A provision as follows:

Change of occupation:

If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the most recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable, or prior to date of proof of change in occupation, with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation.

(b) A provision as follows:

Misstatement of age:

If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age.

(c) A provision as follows:

Relation of earnings to issuance:

If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of two (2) years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two (2) years as shall exceed the

pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of Two Hundred Dollars ($200.00) or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time.

(The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age fifty (50) or, (2) in the case of a policy issued after age forty-four (44), for at least five (5) years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss of time coverage," approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulations by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the commissioner, or any combination of such coverages. In the absence of such definition, such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employer's liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations.)

(d) A provision as follows:

Unpaid premium:

Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

(e) A provision as follows:

Cancellation:

The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to his last address as shown by the records of the insurer, stating when, not less than five (5) days thereafter, such cancellation shall be effective; and after the policy has been continued beyond its original term, the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation.

(f) A provision as follows:

Conformity with state statutes:

Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes.

(g) A provision as follows:

Illegal occupation:

The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation.

(h) A provision as follows:

Intoxicants and narcotics:

The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician.

(3) **Inapplicable or inconsistent provisions.** If any provision of this section is, in whole or in part, inapplicable to or inconsistent with the coverage provided by a particular form of policy, the insurer, with the approval of the commissioner, shall omit from such policy any inapplicable provision or part of a provision, and shall modify any inconsistent provision or part of the provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

(4) **Order of certain policy provisions.** The provisions which are the subject of subsections (1) and (2) of this section, or any corresponding provisions which are used in lieu thereof in accordance with such subsections, shall be printed in the consecutive order of the provisions in such subsections or, at the option of the insurer, any such provision may appear as a unit in any part of the policy, with other provisions to which it may be logically related, provided the resulting policy shall not be, in whole or in part, unintelligible, uncertain, ambiguous, abstruse or likely to mislead a person to whom the policy is offered, delivered or issued.

(5) **Third-party ownership.** The word "insured," as used in Sections 83-9-1 through 83-9-21, Mississippi Code of 1972, shall not be construed as preventing a person other than the insured with a proper insurable interest from making application for and owning a policy covering the insured, or from being entitled under such a policy to any indemnities, benefits and rights provided therein.

(6) **Requirements of other jurisdictions.**(a) Any policy of a foreign or alien insurer, when delivered or issued for delivery to any person in this state, may contain any provision which is not less favorable to the insured or the beneficiary than the provisions of Sections 83-9-1 through 83-9-21, Mississippi Code of 1972, and which is prescribed or required by the law of the state under which the insurer is organized.

(b) Any policy of a domestic insurer may, when issued for delivery in any other state or country, contain any provision permitted or required by the laws of such other state or country.

(7) **Filing procedure.** The commissioner may make such reasonable rules and regulations concerning the procedure for the filing or submission of policies subject to the cited sections as are necessary, proper or advisable to the administration of said sections. This provision shall not abridge any other authority granted the commissioner by law.

(8) **Administrative penalties.**

(a) If the commissioner finds that an insurer, during any calendar year, has paid at least eighty-five percent (85%), but less than ninety-five percent (95%), of all clean claims received from all providers during that year in accordance with the provisions of subsection (1)(h) of this section, the commissioner may levy an aggregate penalty in an amount not to exceed Ten Thousand Dollars ($10,000.00). If the commissioner finds that an insurer, during any calendar year, has paid at least fifty percent (50%), but less than eighty-five percent (85%), of all clean claims received from all providers during that year in accordance with the provisions of subsection (1)(h) of this section, the commissioner may levy an aggregate penalty in an amount of not less than Ten Thousand Dollars ($10,000.00) nor more than One Hundred Thousand Dollars ($100,000.00). If the commissioner finds that an insurer, during any calendar year, has paid less than fifty percent (50%) of all clean claims received from all providers during that year in accordance with the provisions of subsection (1)(h) of this section, the commissioner may levy an aggregate penalty in an amount not less than One Hundred Thousand Dollars ($100,000.00) nor more than Two Hundred Thousand Dollars ($200,000.00). In determining the amount of any fine, the commissioner shall take into account whether the failure to achieve the standards in subsection (1)(h) of this section were due to circumstances beyond the control of the insurer. The insurer may request an administrative hearing to contest the assessment of any administrative penalty imposed by the commissioner pursuant to this subsection within thirty (30) days after receipt of the notice of assessment.

(b) Examinations to determine compliance with subsection (1)(h) of this section may be conducted by the commissioner or any of his examiners. The commissioner may contract with qualified impartial outside sources to assist in examinations to determine compliance. The expenses of any such examinations shall be paid by the insurer examined.

(c) Nothing in the provisions of subsection (1)(h) of this section shall require an insurer to pay claims that are not covered under the terms of a contract or policy of accident and sickness insurance.

(d) An insurer and a provider may enter into an express written agreement containing timely claim payment provisions which differ from, but are at least as stringent as, the provisions set forth under subsection (1)(h) of this section, and in such case, the provisions of the written agreement shall govern the timely payment of claims by the insurer to the provider. If the express written agreement is silent as to any interest penalty where claims are not paid in accordance with the agreement, the interest penalty provision of subsection (1)(h)3 of this section shall apply.

(e) The commissioner may adopt rules and regulations necessary to ensure compliance with this subsection.

**HISTORY: Codes, 1942, § 5687-03; Laws, 1956, ch. 330, § 3; Laws, 1989, ch. 466, § 1; Laws, 1991, ch. 474, § 2; Laws, 2002, ch. 575, § 1; Laws, 2013, ch. 302, § 2; brought forward without change, Laws, 2014, ch. 404, § 2, eff from and after July 1, 2014; Laws, 2019, ch. 383, § 1, eff from and after July 1, 2019; Laws, 2020, ch. 420, § 1, eff from and after July 1, 2020.**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected errors in this section. Corrected reference terminology in (1), (1)(b)1 and (1)(h) 4. The Joint Committee ratified the corrections at its August 16, 2012, meeting.

**Amendment Notes —** The 2013 amendment, substituted "paragraph (h)3 of this subsection" for "subsection (1)(h)3 of this section" in the last sentence of the last paragraph in (1), and in (1)(h)4; substituted "subsection" for "subparagraph" in the second paragraph of (1)(b)1.; added the last two sentences in the second paragraph of (1)(i) and deleted "s, or either of them" from the beginning of the third paragraph and first sentence of (1)(b)(i); and deleted the former last sentence which read: "Subject to any written direction of the insured in the application or otherwise, all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person").

The 2014 amendment brought forward the section without change.

The 2019 amendment, in (1)(h), added the last sentence in 1, in 3, substituted "three percent (3%)" for "one and one-half percent (1-1/2%)" and added the last paragraph, and in 4, substituted "subparagraph 3 of this paragraph (h)" for "paragraph (h)3 of this subsection" and added the last sentence.

The 2020 amendment added the last two sentences in the first full paragraph of (1)(i).

## § 83-9-6. Freedom of consumer choice for pharmacy under certain health insurance.

### JUDICIAL DECISIONS

**2. Applicablity.**

Miss. Code Ann. § 83-9-6 applies to the Mississippi State and School Employees' Life and Health Plan because it applies to "all health benefit plans providing pharmaceutical services benefits, including prescription drugs, to any resident of Mississippi" and is not ambiguous. Miss. State & Sch. Emples. Life & Health Plan v. KCC, Inc., 108 So. 3d 932, 2013 Miss. LEXIS 69 (Miss. 2013).

## § 83-9-6.3. Standardized prior authorization form for obtaining prior authorization for prescription drug benefits.

(1) As used in this section:

(a) "Health benefit plan" means services consisting of medical care, provided directly, through insurance or reimbursement, or otherwise, and including items and services paid for as medical care under any hospital or medical service policy or certificate, hospital or medical service plan con-

tract, preferred provider organization, or health maintenance organization contract offered by a health insurance issuer. The term "health benefit plan" includes the Medicaid fee-for-service program and any managed care program, coordinated care program, coordinated care organization program or health maintenance organization program implemented by the Division of Medicaid.

(b) "Health insurance issuer" means any entity that offers health insurance coverage through a health benefit plan, policy, or certificate of insurance subject to state law that regulates the business of insurance. "Health insurance issuer" also includes a health maintenance organization, as defined and regulated under Section 83-41-301 et seq., and includes the Division of Medicaid for the services provided by fee-for-service and through any managed care program, coordinated care program, coordinated care organization program or health maintenance organization program implemented by the division.

(c) "Prior authorization" means a utilization management criterion used to seek permission or waiver of a drug to be covered under a health benefit plan that provides prescription drug benefits.

(d) "Prior authorization form" means a standardized, uniform application developed by a health insurance issuer for the purpose of obtaining prior authorization.

(2) Notwithstanding any other provision of law to the contrary, in order to establish uniformity in the submission of prior authorization forms, on or after January 1, 2014, a health insurance issuer shall use only a single, standardized prior authorization form for obtaining any prior authorization for prescription drug benefits. The form shall not exceed two (2) pages in length, excluding any instructions or guiding documentation. The form shall also be made available electronically, and the prescribing provider may submit the completed form electronically to the health benefit plan. Additionally, the health insurance issuer shall submit its prior authorization forms to the Mississippi Department of Insurance to be kept on file on or after January 1, 2014. A copy of any subsequent replacements or modifications of a health insurance issuer's prior authorization form shall be filed with the Mississippi Department of Insurance within fifteen (15) days prior to use or implementation of such replacements or modifications.

(3) A health insurance issuer shall respond within two (2) business days upon receipt of a completed prior authorization request from a prescribing provider that was submitted using the standardized prior authorization form required by subsection (2) of this section.

**HISTORY: Laws, 2013, ch. 508, § 1, eff from and after July 1, 2013.**

## § 83-9-6.4. Individual and group health insurance policies to permit partial supply of prescription medication for purpose of synchronizing patient's medication under certain circumstances.

(1) An individual or group health insurance policy providing prescription

drug coverage in the state shall permit and apply a prorated daily cost-sharing rate to prescriptions that are dispensed by a network pharmacy for a partial supply if the prescriber or pharmacist determines the fill or refill to be in the best interest of the patient and the patient requests or agrees to a partial supply for the purpose of synchronizing the patient's medications.

(2) No individual or group health insurance policy providing prescription drug coverage shall deny coverage for the dispensing of a medication that is dispensed by a network pharmacy on the basis that the dispensing is for a partial supply if the prescriber or pharmacist determines the fill or refill to be in the best interest of the patient and the patient requests or agrees to a partial supply for the purpose of synchronizing the patient's medications.

(3) No individual or group health insurance policy providing prescription drug coverage shall use payment structures incorporating prorated dispensing fees. Dispensing fees for partially filled or refilled prescriptions shall be paid in full for each prescription dispensed, regardless of any prorated daily cost-sharing rate for the beneficiary or fee paid for alignment services.

(4) The provisions of this section shall be fully applicable to any managed health care delivery entities including the State and School Employees Health Insurance Plan and the Mississippi Medicaid Program.

**HISTORY: Laws, 2018, ch. 308, § 1, eff from and after January 1, 2019.**

## § 83-9-22. Health coverage plans prohibited from restricting coverage for medically appropriate treatment prescribed by physician based on insured's diagnosis with terminal condition.

(1)(a) Notwithstanding any other provision of the law to the contrary, no health coverage plan shall restrict coverage for medically appropriate treatment prescribed by a physician and agreed to by a fully informed insured, or if the insured lacks legal capacity to consent by a person who has legal authority to consent on his or her behalf, based on an insured's diagnosis with a terminal condition. Refusing to pay for treatment rendered to an insured near the end of life that is consistent with best practices for treatment of a disease or condition, approved uses of a drug or device, or uses supported by peer reviewed medical literature, is a per se violation of this section.

(b) Violations of this section shall constitute an unfair trade practice and subject the violator to the penalties provided by law.

(c) As used in this section "terminal condition" means any aggressive malignancy, chronic end-stage cardiovascular or cerebral vascular disease, or any other disease, illness or condition which a physician diagnoses as terminal.

(d) As used in this section, a "health coverage plan" shall mean any hospital, health or medical expense insurance policy, hospital or medical service contract, employee welfare benefit plan, contract or agreement with

a health maintenance organization or a preferred provider organization, health and accident insurance policy, or any other insurance contract of this type, including a group insurance plan and the State Health and Life Insurance Plan.

(2)(a) Notwithstanding any other provision of the law to the contrary, no health benefit paid directly or indirectly with state funds, specifically Medicaid, shall restrict coverage for medically appropriate treatment prescribed by a physician and agreed to by a fully informed individual, or if the individual lacks legal capacity to consent by a person who has legal authority to consent on his or her behalf, based on an individual's diagnosis with a terminal condition.

(b) Refusing to pay for treatment rendered to an individual near the end of life that is consistent with best practices for treatment of a disease or condition, approved uses of a drug or device, or uses supported by peer reviewed medical literature, is a per se violation of this section.

(c) As used in this section "terminal condition" means any aggressive malignancy, chronic end-stage cardiovascular or cerebral vascular disease, or any other disease, illness or condition which a physician diagnoses as terminal.

**HISTORY: Laws, 2014, ch. 439, § 1, eff from and after July 1, 2014.**

## § 83-9-24. Prohibition against requiring higher co-payment, coinsurance, etc., for patient-administered anti-cancer medications than is required for anti-cancer medications injected or intravenously administered by health care provider.

(1)(a) As used in this section, the following terms shall be defined as provided in this subsection:

(b) "Anti-cancer medication" means drugs and biologics that are used to kill, slow, or prevent the growth of cancerous cells.

(c) "Health plan or policy" means any hospital, health or medical expense insurance policy, hospital or medical service contract, employee welfare benefit plan, contract or agreement with a health maintenance organization or a preferred provider organization, health and accident insurance policy, or any other insurance contract of this type, including a group insurance plan and the State and School Employees Life and Health Insurance Plan.

(2) Any health plan or policy delivered, issued for delivery or renewed in this state on or after January 1, 2016, that covers anti-cancer medications that are injected or intravenously administered by a health care provider and patient-administered anti-cancer medications, including, but not limited to, those orally administered or self-injected, may not require a higher co-payment, deductible or coinsurance amount for patient-administered anti-cancer medications than it requires for injected or intravenously administered

anti-cancer medications, regardless of the formulation or benefit category determination by the policy or plan.

(3) The health insurance policy or plan may not comply with subsection (2) of this section by:

(a) Increasing the co-payment, deductible or coinsurance amount required for injected or intravenously administered anti-cancer medications that are covered under the policy or plan; or

(b) Reclassifying benefits with respect to anti-cancer medications.

**HISTORY: Laws, 2015, ch. 490, § 1, eff from and after July 1, 2015.**

**Cross References —** State health plan cannot require higher co-payment, coinsurance, etc., for patient-administered anti-cancer medications than it requires for anti-cancer medications injected or intravenously adminitered by health care provider, see § 25-15-9.

## § 83-9-26. Screening, diagnosis and treatment of autism spectrum disorder.

(1) Except as otherwise provided herein, a health insurance policy shall provide coverage for the screening, diagnosis, and treatment of autism spectrum disorder. To the extent that the screening, diagnosis, and treatment of autism spectrum disorder are not already covered by a health insurance policy, coverage under this section will be included in health insurance policies that are delivered, executed, issued, amended, adjusted, or renewed in this state, or outside this state if insuring residents of this state, on or after January 1, 2016. No insurer can terminate coverage, or refuse to deliver, execute, issue, amend, adjust, or renew coverage to an individual solely because the individual is diagnosed with or has received treatment for an autism spectrum disorder.

(2) Coverage under this section must not be subject to dollar limits, deductibles, or coinsurance provisions that are less favorable to an insured than the dollar limits, deductibles, or coinsurance provisions that apply to substantially all medical and surgical benefits under the health insurance policy, except as otherwise provided in subsection (5) of this section.

(3) This section shall not be construed as limiting benefits that are otherwise available to an individual under a health insurance policy.

(4) As used in this section:

(a) "Applied behavior analysis" means the individualized design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

(b) "Autism spectrum disorder" means any of the pervasive developmental disorders or autism spectrum disorders as defined by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) or the edition that was in effect at the time of diagnosis.

(c) "Behavioral health treatment" means behavior modification and mental health counseling and treatment programs, including applied behavior analysis, that are:

(i) Necessary to develop or restore, to the maximum extent practicable, the functioning of an individual; and

(ii) Provided or supervised by a licensed behavior mental health professional, so long as the services performed are commensurate with the licensed mental health professional's competency area, training and supervised experience.

(d) "Diagnosis of autism spectrum disorder" means medically necessary assessment, evaluations, or tests to diagnose whether an individual has an autism spectrum disorder, as performed by a licensed psychologist or licensed physician.

(e) "Licensed behavior analyst" means a professional licensed under Section 73-75-13(d) to practice applied behavior analysis in the State of Mississippi.

(f) "Health insurance policy" includes all individual and group health insurance policies providing coverage on an expense-incurred basis, individual and group service or indemnity type contracts issued by a nonprofit corporation, individual and group service contracts issued by a health maintenance organization or preferred provider organization, all self-insured group arrangements to the extent not preempted by federal law, all plans for state and political subdivisions and all managed health care delivery entities of any type or description providing coverage to any resident of this state.

(g) "Pharmacy care" means medications approved by the United States Food and Drug Administration and prescribed by a licensed physician, and any health-related services deemed medically necessary to determine the need or effectiveness of the medications.

(h) "Psychiatric care" means direct or consultative services provided by a psychiatrist licensed to practice in the State of Mississippi or as provided under the applicable health insurance policy.

(i) "Psychological care" means direct or consultative services provided by a psychologist licensed to practice in the State of Mississippi or as provided under the applicable health insurance policy.

(j) "Therapeutic care" means services provided by licensed speech-language pathologists, occupational therapists, or physical therapists as covered by the health insurance policy.

(k) "Treatment for autism spectrum disorder" means evidence-based care prescribed or ordered for an individual diagnosed with an autism spectrum disorder by a licensed physician or a licensed psychologist who determines the care to be medically necessary, including, but not limited to:

(i) Behavioral health treatment;

(ii) Pharmacy care;

(iii) Psychiatric care;

(iv) Psychological care; and

(v) Therapeutic care.

(*l*) "Treatment plan" means a written, comprehensive, and individualized intervention plan that incorporates specific treatment goals, individualized with objectives, data collection and analysis plan, and goal change procedures if goals are not met.

(5) Coverage under this section for applied behavior analysis shall be limited to twenty-five (25) hours per week, and shall not be required beyond the age of eight (8) years. No more than ten (10) hours per week shall be for the services of a licensed behavior analyst; however, all services must be provided under the supervision or direction of a licensed behavior analyst or licensed psychologist. Coverage for applied behavior analysis pursuant to an ongoing treatment plan may be extended beyond the limits provided in this subsection if medical necessity for the extension is determined to exist, or in the event of disagreement, the appeal rights under the applicable health insurance policy shall govern.

(6) Except for inpatient services, if an insured is receiving treatment for an autism spectrum disorder, an insurer shall have the right to review the treatment plan every six (6) months, unless the insurer and the insured's treating physician or psychologist agree that a more frequent review is necessary. The cost of obtaining any review of the treatment plan shall be borne by the insurer.

(7) This section shall not be construed to require an insurer to provide coverage for any services to an individual under an individualized family service plan, an individualized education program, or an individualized service plan, required by federal or state law to be performed by public schools, including, but not limited to, individualized education programs, special education services, Individuals with Disabilities Education Improvement Act programs, attention deficit-hyperactivity disorder classrooms, or autism spectrum disorder classrooms.

(8) Nothing in this section shall apply to nongrandfathered plans in the individual and small group markets that are required to include essential health benefits under the Patient Protection and Affordable Care Act or to Medicare supplement, accident-only, specified disease, hospital indemnity, disability income, long-term care, or other limited benefit hospital insurance policies.

(9) A small employer with one hundred (100) or fewer eligible employees that provides or offers a health insurance policy to its employees will offer coverage for the screening, diagnosis and treatment of autism spectrum disorder as provided in this section. The small employer may charge the plan participant with the cost of obtaining the additional coverage.

(10) In the event that any part of this legislation is rendered or declared invalid or unenforceable by a court of competent jurisdiction, such invalidation shall not invalidate the remaining portions thereof, and they shall remain in full force and effect.

**HISTORY: Laws, 2015, ch. 415, § 1, eff from and after July 1, 2015.**

**Editor's Notes —** Laws of 2015, ch. 415, § 16 provides:
"SECTION 16. Section 1 of this act shall be codified as a new section in Chapter 9, Title 83, Mississippi Code of 1972 [Section 83-9-26]. Sections 2 through 15 of this act shall be codified as a new chapter in Title 73, Mississippi Code of 1972 [Chapter 75, Sections 73-75-1 through 73-75-27]."

## COVERAGE FOR TREATMENT OF MENTAL ILLNESS, TEMPOROMANDIBULAR JOINT DISORDER AND CRANIOMANDIBULAR DISORDER

Sec.


### § 83-9-39. Coverage.

(1)(a) Except as otherwise provided herein, all alternative delivery systems and all group health insurance policies, plans or programs regulated by the State of Mississippi shall provide covered benefits for the treatment of mental illness, except for policies which only provide coverage for specified diseases and other limited benefit health insurance policies and negotiated labor contracts.

(b) Health insurance policies, plans or programs of any employer of one hundred (100) or fewer eligible employees and all individual health insurance policies which are regulated by the State of Mississippi which do not currently offer benefits for treatment of mental illness shall offer covered benefits for the treatment of mental illness, except for policies which only provide coverage for specified diseases and other limited benefit health insurance policies and negotiated labor contracts.

(2) Covered benefits for inpatient treatment of mental illness in insurance policies and other contracts subject to Sections 83-9-37 through 83-9-43 shall be limited to inpatient services certified as necessary by a health service provider.

(3) Covered benefits for outpatient treatment of mental illness in insurance policies and other contracts subject to Sections 83-9-37 through 83-9-43 shall be limited to outpatient services certified as necessary by a health service provider.

(4) Before an insured party may qualify to receive benefits under Sections 83-9-37 through 83-9-43, a health service provider shall certify that the individual is suffering from mental illness and refer the individual for the appropriate treatment.

(5) All mental illness, treatment or services with respect to such treatment eligible for health insurance coverage shall be subject to professional utilization and peer review procedures.

(6) The provisions of this section shall apply only to alternative delivery systems and individual and group health insurance policies, plans or programs issued or renewed after July 1, 1991.

(7) The exclusion period for coverage of a preexisting mental condition shall be the same period of time as that for other medical illnesses covered under the same plan, program or contract.

**HISTORY: Laws, 1991, ch. 570, § 2; reenacted without change by Laws, 1994, ch. 354, § 2; Laws, 2001, ch. 533, § 1; Laws, 2014, ch. 308, § 1, eff from and after July 1, 2014.**

**Editor's Notes —** Section 83-9-40 referred to in (1)(a), was repealed by Laws of 2014, ch. 308, § 3 repealed effective July 1, 2014.

Laws of 2014, ch. 308, § 4, provides:

"SECTION 4. This act shall take effect and be in force from and after July 1, 2014, and shall apply only to alternative delivery systems and individual and group health insurance policies, plans or programs issued or renewed on or after July 1, 2014."

**Amendment Notes —** The 2014 amendment deleted the former last sentence in (1)(a), which read: "This coverage for treatment of mental illness shall not be required if the application of this provision results in an increase in the cost under the plan or coverage of one percent (1%) or more as determined in Section 83-9-40"; and deleted the former last sentence of (1)(b), which read: "This coverage shall be offered on an optional basis, but the owner of the policy, plan or program must reject such coverage in writing."

## § 83-9-40. Repealed.

Repealed by Laws of 2014, ch. 308, § 3, effective from and July 1, 2014.

§ 83-9-40. [Laws, 2001, ch. 533, § 3, eff from and after Jan. 1, 2002.]

**Editor's Notes —** Former § 83-9-40 provided the formula for determining which health insurance policies were required to provide covered benefits for the treatment of mental illness.

## § 83-9-41. Mental illness benefits.

(1) Covered benefits for services in this section shall be limited to coverage of treatment of clinically significant mental illness.

(2) Treatment under this section shall be covered for a minimum of thirty (30) days per year for inpatient services, a minimum of sixty (60) days per year for partial hospitalization, and a minimum of fifty-two (52) outpatient visits per year.

(3) The rate of payment for inpatient services, outpatient services, and partial hospitalization shall be the same as provided for any other condition.

**HISTORY: Laws, 1991, ch. 570, § 3; reenacted without change by Laws, 1994, ch. 354, § 3; Laws, 2001, ch. 533, § 2; Laws, 2014, ch. 308, § 2, eff from and after July 1, 2014.**

**Editor's Notes —** Laws of 2014, ch. 308, § 4, provides:

"SECTION 4. This act shall take effect and be in force from and after July 1, 2014, and shall apply only to alternative delivery systems and individual and group health insurance policies, plans or programs issued or renewed on or after July 1, 2014."

**Amendment Notes —** The 2014 amendment in (3), inserted "outpatient services" preceding "and partial hospitalization shall be the same as provided for any other condition" in the first sentence and deleted the former last sentence which read: "The rate of payment for outpatient visits shall be a minimum of fifty percent (50%) of

covered expenses which may be limited to a maximum payment of Fifty Dollars ($50.00) per visit."

## COMPREHENSIVE HEALTH INSURANCE RISK POOL ASSOCIATION

Sec.



### § 83-9-209. Eligibility for coverage; maximum lifetime benefits; termination of coverage; unfair trade practice by insurers, agents or brokers, or employers.

(1) Any individual who is and continues to be a resident shall be eligible for coverage under this plan if evidence is provided of:

(a) A notice of rejection or refusal to issue health insurance coverage for health reasons by one (1) insurer;

(b) A refusal by an insurer to issue health insurance coverage except with material underwriting restriction; or

(c) A refusal by an insurer to issue health insurance coverage except at a rate exceeding the plan rate.

(2) The board shall develop a procedure for eligibility for coverage by the association for any natural person who changes his domicile to this state and who at the time domicile is established in this state is insured by an organization similar to the association. The eligible maximum lifetime benefits for such covered person shall not exceed the lifetime benefits available through the association, less any benefits received from a similar organization in the former domiciliary state.

(3) The board may promulgate a list of medical or health conditions for which a person shall be eligible for plan coverage without applying for health insurance coverage under subsection (1) of this section. Persons who can demonstrate the existence or history of any medical or health conditions on such list promulgated by the board may not be required to provide the evidence specified in subsection (1) of this section. Any such list previously promulgated by the board may be amended or repealed by the board from time to time as may be appropriate.

(4) A person shall not be eligible for coverage under this plan if:

(a) The person has or obtains health insurance coverage, or would be eligible to have coverage if the person elected to obtain it; except that:

(i) A person may maintain other coverage for the period of time the person is satisfying a preexisting condition waiting period under a plan policy; and

(ii) A person may maintain plan coverage for the period of time the person is satisfying a preexisting condition waiting period under another health insurance policy intended to replace the plan policy.

(b) The person is determined to be eligible for health care benefits under the Mississippi Medicaid Law, Section 43-13-101 et seq., or Medicare.

(c) The person previously terminated plan coverage unless twelve (12) months have elapsed since the person's latest termination.

(d) The plan has paid out One Million Dollars ($1,000,000.00) in benefits on behalf of the person. The lifetime maximum shall be One Million Dollars ($1,000,000.00).

(e) The person is an inmate or resident of a public institution.

(f) The person's premiums are paid for or reimbursed under any government sponsored program or by any government agency or health care provider, except as an otherwise qualifying full-time employee, or dependent thereof, of a government agency or health care provider.

(5) The coverage of any person shall cease:

(a) On the date a person is no longer a resident of this state;

(b) Upon the death of the covered person;

(c) On the date state law requires cancellation of the policy; or

(d) At the option of the association, thirty (30) days after the association makes any inquiry concerning the person's eligibility or place of residence to which the person does not reply.

(6) The coverage of any person who ceases to meet the eligibility requirements of this section may be terminated immediately.

(7) It shall constitute an unfair trade practice for any insurer, insurance agent or broker, employer or third-party administrator to refer an individual employee or a dependent of an individual employee to the association, or to arrange for an individual employee or a dependent of an individual employee to apply to the program, for the purpose of separating such employee or dependent from a group health benefits plan provided in connection with the employee's employment.

**HISTORY: Laws, 1991, ch. 593, § 5; Laws, 1995, ch. 490, § 5; reenacted and amended, Laws, 1997, ch. 311, § 5; Laws, 2009, ch. 385, § 3; Laws, 2016, ch. 306, § 1, eff from and after passage (approved Apr. 4, 2016).**

**Amendment Notes —** The 2016 amendment, in (1), substituted "issue health insurance coverage" for "issue substantially similar insurance" in (a) and for "issue insurance" in (b) and (c); deleted former (2), which read: "A federally defined eligible individual who has not experienced a significant break in coverage and who is and continues to be a resident shall be eligible for plan coverage" and redesignated the remaining subsections accordingly; in (3), substituted "board may promulgate" for "board shall promulgate" in the first sentence, substituted "such list promulgated by the board may not" for "the list promulgated by the board shall not" in the second sentence, and rewrote the last sentence, which read: "The list may be amended by the board from time to time as may be appropriate"; in (4), deleted "substantially similar to or more

comprehensive than a plan policy" following "health insurance coverage" in (a) and deleted "except that this paragraph (c) shall not apply with respect to an applicant who is a federally defined eligible individual" from the end of (c).

## § 83-9-211. Creation of association; membership; board of directors; adoption of plan, articles, bylaws and operating rules.

(1) There is created a nonprofit legal entity to be known as the "Comprehensive Health Insurance Risk Pool Association." All insurers, as a condition of doing business, shall be members of the association.

(2)(a) The association shall operate subject to the supervision and approval of an eleven-member board of directors consisting of:

(i) Six (6) members appointed by the Insurance Commissioner. Two (2) of the commissioner's appointees shall be chosen from the general public and shall not be associated with the medical profession, a hospital or an insurer. Two (2) appointees shall be representatives of medical providers. One (1) appointee shall be a representative of businesses employing fewer than one hundred (100) employees. One (1) appointee shall be a representative of health insurance agents. Any board member appointed by the commissioner may be removed and replaced by him at any time without cause.

(ii) Three (3) members appointed by the participating insurers, at least one (1) of whom is a domestic insurer.

(iii) The Chair of the Senate Insurance Committee and the Chair of the House Insurance Committee, or their designees, who shall be nonvoting, ex officio members of the board.

(iv) Of those initial members appointed by the Insurance Commissioner, one (1) shall serve for a term of one (1) year, two (2) for a term of two (2) years, and one (1) for a term of three (3) years. Of those initial members appointed by the participating insurers, one (1) shall serve for a term of one (1) year, one (1) shall serve for a term of two (2) years, and one (1) shall serve for a term of three (3) years. The appointing authority shall designate the period of service of each initial appointee at the time of appointment.

(v) All appointments after the initial term shall be for a term of three (3) years.

(b) The board of directors shall elect one (1) of its members as chairman.

(c) Board members may be reimbursed from monies of the association for actual and necessary expenses incurred by them as members in the manner and amount provided in Section 25-3-41, Mississippi Code of 1972, but shall not otherwise be compensated for their services.

(3) The association shall adopt a plan in accordance with Sections 83-9-201 through 83-9-222 and submit its articles, bylaws and operating rules to the State Department of Insurance for approval. If the association fails to adopt such plan and suitable articles, bylaws and operating rules within ninety (90) days after the appointment of the board, the State Department of Insurance shall adopt rules to effectuate the provisions of Sections 83-9-201

through 83-9-222; and such rules shall remain in effect until superseded by a plan and articles, bylaws and operating rules submitted by the association and approved by the State Department of Insurance.

(4) Individual board members shall not be liable and shall be immune from suit at law or equity for any conduct performed in good faith and which is within the subject matter over which they have been given jurisdiction.

**HISTORY: Laws, 1991, ch. 593, § 6; Laws, 1995, ch. 490, § 6; reenacted and amended, Laws, 1997, ch. 311, § 6; Laws, 2009, ch. 385, § 4; Laws, 2012, ch. 302, § 1, eff from and after passage (approved Mar. 30, 2012).**

**Amendment Notes —** The 2012 amendment substituted "an eleven-member" for "a nine-member" preceding "board of directors consisting of" at the end of (2)(a); in (2)(a)(i), substituted "Six (6)" for "Four (4)" at the beginning of first sentence, "Two (2)" for "One (1)" at beginning of third sentence, added fourth sentence, and made minor stylistic changes; inserted "initial" preceding "members" in the first and second sentences in (2)(a)(iv); substituted "appointments" for "terms" and "term" for "period" in (2)(a)(v).

## § 83-9-214. Distribution of funds held by Comprehensive Health Insurance Risk Pool Association upon cessation of operations.

Upon the cessation of operations by the Comprehensive Health Insurance Risk Pool Association, the distribution of any funds held by the association, including the refund of assessments, shall require the prior approval of the Commissioner of Insurance.

**HISTORY: Laws, 2018, ch. 384, § 1, eff from and after passage (approved March 19, 2018).**

## § 83-9-219. Insurance of plan coverage; issuance of policies.

The coverage provided by the plan shall be directly insured by the association, and the policies shall be issued through the administering insurer. Subject to the approval of the commissioner, the association may close enrollment in, and/or cease to offer the coverage provided by, the plan at any time upon a determination by the board that the availability of such coverage is no longer necessary.

**HISTORY: Laws, 1991, ch. 593, § 10; reenacted, Laws, 1995, ch. 490, § 11; reenacted without change, Laws, 1997, ch. 311, § 11; Laws, 2016, ch. 306, § 2, eff from and after passage (approved Apr. 4, 2016).**

**Amendment Notes —** The 2016 amendment added the second sentence.

## § 83-9-221. Coverage; rates; exclusion for preexisting conditions; certain individuals excepted from exclusion; other sources primary.

(1) **Coverage offered.**

(a) The plan shall offer the coverage specified in this section for each

eligible person subject to the association's discretion to close enrollment and/or cease offering coverage as authorized in Section 83-9-219.

(b) If an eligible person is also eligible for Medicare coverage, the plan shall not pay or reimburse any person for expenses paid by Medicare.

(c) Any person whose health insurance coverage is involuntarily terminated for any reason other than nonpayment of premium may apply for coverage under the plan. If such coverage is applied for within sixty-three (63) days after the involuntary termination and if premiums are paid for the entire period of coverage, the effective date of the coverage shall be the date of termination of the previous coverage.

(2) **Major medical expense coverage.** The coverage issued by the plan, its schedule of benefits, exclusions and other limitations shall be established by the board and may be amended from time to time subject to the approval of the commissioner.

(3) In establishing the plan coverage, the board shall take into consideration the levels of health insurance coverage provided in the state and medical economic factors as may be deemed appropriate; and promulgate benefit levels, deductibles, coinsurance factors, exclusions and limitations determined to be generally reflective of and commensurate with health insurance coverage provided through a representative number of large employers in the state.

(4) Rates for coverages issued by the association may not be unreasonable in relation to the benefits provided, the risk experience and the reasonable expenses of providing the coverage.

(a) Separate schedules of premium rates based on age may apply for individual risks.

(b) Rates are subject to approval by the State Department of Insurance.

(c) Standard risk rates for coverages issued by the association shall be established by the association, subject to approval by the department, using reasonable actuarial techniques, and shall reflect anticipated experiences and expenses of such coverages for standard risks.

(d) The rating plan established by the association shall initially provide for rates equal to one hundred fifty percent (150%) of the average standard risk rates. Any changes in the initial rates shall be based on experience of the plan and shall reflect reasonably anticipated losses and expenses.

(e) No rate shall exceed one hundred seventy-five percent (175%) of the standard risk rate.

(5) **Preexisting conditions.** An association policy may contain provisions under which coverage is excluded during a period of twelve (12) months following the effective date of coverage with respect to a given covered individual for any preexisting condition, as long as:

(i) The condition manifested itself within a period of six (6) months before the effective date of coverage;

(ii) Medical advice or treatment was recommended or received within a period of six (6) months before the effective date of coverage.

(6) **Other sources primary.**

(a) The association shall be payer of last resort of benefits whenever any other benefit or source of third-party payment is available. The coverage

provided by the association shall be considered excess coverage, and benefits otherwise payable under association coverage shall be reduced by all amounts paid or payable through any other health insurance coverage and by all hospital and medical expense benefits paid or payable under any workers' compensation coverage, automobile medical payment or liability insurance whether provided on the basis of fault or nonfault, and by any hospital or medical benefits paid or payable by any insurer or insurance arrangement or any hospital or medical benefits paid or payable under or provided pursuant to any state or federal law or program.

(b) No amounts paid or payable by Medicare or any other governmental program or any other insurance, or self-insurance maintained in lieu of otherwise statutorily required insurance, may be made or recognized as claims under such policy or be recognized as or towards satisfaction of applicable deductibles or out-of-pocket maximums or to reduce the limits of benefits available.

(c) The association shall have a cause of action against a participant for the recovery of the amount of any benefits paid to the participant which should not have been claimed or recognized as claims because of the provisions of this subsection or because otherwise not covered. Benefits due from the association may be reduced or refused as a setoff against any amount recoverable under this paragraph.

**HISTORY: Laws, 1991, ch. 593, § 11; Laws, 1995, ch. 490, § 12; reenacted and amended, Laws, 1997, ch. 311, § 12; Laws, 2009, ch. 385, § 8; Laws, 2016, ch. 306, § 3, eff from and after passage (approved Apr. 4, 2016).**

**Amendment Notes —** The 2016 amendment rewrote (1)(a), which read: "The plan shall offer in an annually renewable policy the coverage specified in this section for each eligible person"; rewrote (2), which read: "The plan shall offer major medical expense coverage to every eligible person who is not eligible for Medicare. The coverage to be issued by the plan, its schedule of benefits, exclusions and other limitations shall be established by the board and may be amended from time to time subject to the approval of the commissioner"; and deleted (5)(b), which read: "No preexisting condition exclusion shall be applied to a federally defined eligible individual" and made a related stylistic change.

## COVERAGE FOR TELEMEDICINE SERVICES

Sec.



### § 83-9-351. Health insurance plans in Mississippi to provide coverage for telemedicine services; definitions.

(1) As used in this section:

(a) "Employee benefit plan" means any plan, fund or program established or maintained by an employer or by an employee organization, or both, to the extent that such plan, fund or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, medical, surgical, hospital care or other benefits.

(b) "Health insurance plan" means any health insurance policy or health benefit plan offered by a health insurer, and includes the State and School Employees Health Insurance Plan and any other public health care assistance program offered or administered by the state or any political subdivision or instrumentality of the state. The term does not include policies or plans providing coverage for specified disease or other limited benefit coverage.

(c) "Health insurer" means any health insurance company, nonprofit hospital and medical service corporation, health maintenance organization, preferred provider organization, managed care organization, pharmacy benefit manager, and, to the extent permitted under federal law, any administrator of an insured, self-insured or publicly funded health care benefit plan offered by public and private entities, and other parties that are by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service.

(d) "Telemedicine" means the delivery of health care services such as diagnosis, consultation, or treatment through the use of interactive audio, video, or other electronic media. Telemedicine must be "real-time" consultation, and it does not include the use of audio-only telephone, e-mail, or facsimile.

(2) All health insurance and employee benefit plans in this state must provide coverage for telemedicine services to the same extent that the services would be covered if they were provided through in-person consultation.

(3) A health insurance or employee benefit plan may charge a deductible, co-payment, or coinsurance for a health care service provided through telemedicine so long as it does not exceed the deductible, co-payment, or coinsurance applicable to an in-person consultation.

(4) A health insurance or employee benefit plan may limit coverage to health care providers in a telemedicine network approved by the plan.

(5) Nothing in this section shall be construed to prohibit a health insurance or employee benefit plan from providing coverage for only those services that are medically necessary, subject to the terms and conditions of the covered person's policy.

(6) In a claim for the services provided, the appropriate procedure code for the covered services shall be included with the appropriate modifier indicating interactive communication was used.

(7) The originating site is eligible to receive a facility fee, but facility fees are not payable to the distant site.

**HISTORY: Laws, 2013, ch. 478, § 1; Laws, 2014, ch. 436, § 2, eff from and after July 1, 2014.**

**Amendment Notes —** The 2014 amendment added (1)(a) and redesignated the remaining subsections accordingly; and inserted "and employee benefit" in (2) and "or employee benefit" in (3), (4), and (5).

## § 83-9-353. Coverage and reimbursement for store-and-forward telemedicine services and remote patient monitoring services; definitions.

(1) As used in this section:

(a) "Employee benefit plan" means any plan, fund or program established or maintained by an employer or by an employee organization, or both, to the extent that such plan, fund or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, medical, surgical, hospital care or other benefits.

(b) "Health insurance plan" means any health insurance policy or health benefit plan offered by a health insurer, and includes the State and School Employees Health Insurance Plan and any other public health care assistance program offered or administered by the state or any political subdivision or instrumentality of the state. The term does not include policies or plans providing coverage for specified disease or other limited benefit coverage.

(c) "Health insurer" means any health insurance company, nonprofit hospital and medical service corporation, health maintenance organization, preferred provider organization, managed care organization, pharmacy benefit manager, and, to the extent permitted under federal law, any administrator of an insured, self-insured or publicly funded health care benefit plan offered by public and private entities, and other parties that are by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service.

(d) "Store-and-forward telemedicine services" means the use of asynchronous computer-based communication between a patient and a consulting provider or a referring health care provider and a medical specialist at a distant site for the purpose of diagnostic and therapeutic assistance in the care of patients who otherwise have no access to specialty care. Store-and-forward telemedicine services involve the transferring of medical data from one (1) site to another through the use of a camera or similar device that records (stores) an image that is sent (forwarded) via telecommunication to another site for consultation.

(e) "Remote patient monitoring services" means the delivery of home health services using telecommunications technology to enhance the delivery of home health care, including:

(i) Monitoring of clinical patient data such as weight, blood pressure, pulse, pulse oximetry and other condition-specific data, such as blood glucose;

(ii) Medication adherence monitoring; and

(iii) Interactive video conferencing with or without digital image upload as needed.

(f) "Mediation adherence management services" means the monitoring of a patient's conformance with the clinician's medication plan with respect to timing, dosing and frequency of medication-taking through electronic transmission of data in a home telemonitoring program.

(2) Store-and-forward telemedicine services allow a health care provider trained and licensed in his or her given specialty to review forwarded images and patient history in order to provide diagnostic and therapeutic assistance in the care of the patient without the patient being present in real time. Treatment recommendations made via electronic means shall be held to the same standards of appropriate practice as those in traditional provider-patient setting.

(3) Any patient receiving medical care by store-and-forward telemedicine services shall be notified of the right to receive interactive communication with the distant specialist health care provider and shall receive an interactive communication with the distant specialist upon request. If requested, communication with the distant specialist may occur at the time of the consultation or within thirty (30) days of the patient's notification of the request of the consultation. Telemedicine networks unable to offer the interactive consultation shall not be reimbursed for store-and-forward telemedicine services.

(4) Remote patient monitoring services aim to allow more people to remain at home or in other residential settings and to improve the quality and cost of their care, including prevention of more costly care. Remote patient monitoring services via telehealth aim to coordinate primary, acute, behavioral and long-term social service needs for high-need, high-cost patients. Specific patient criteria must be met in order for reimbursement to occur.

(5) Qualifying patients for remote patient monitoring services must meet all the following criteria:

(a) Be diagnosed, in the last eighteen (18) months, with one or more chronic conditions, as defined by the Centers for Medicare and Medicaid Services (CMS), which include, but are not limited to, sickle cell, mental health, asthma, diabetes, and heart disease; and

(b) The patient's health care provider recommends disease management services via remote patient monitoring.

(6) A remote patient monitoring prior authorization request form may be required for approval of telemonitoring services. If prior authorization is required, the request form must include the following:

(a) An order for home telemonitoring services, signed and dated by the prescribing physician;

(b) A plan of care, signed and dated by the prescribing physician, that includes telemonitoring transmission frequency and duration of monitoring requested;

(c) The client's diagnosis and risk factors that qualify the client for home telemonitoring services;

(d) Attestation that the client is sufficiently cognitively intact and able to operate the equipment or has a willing and able person to assist in completing electronic transmission of data; and

(e) Attestation that the client is not receiving duplicative services via disease management services.

(7) The entity that will provide the remote monitoring must be a Mississippi-based entity and have protocols in place to address all of the following:

(a) Authentication and authorization of users;

(b) A mechanism for monitoring, tracking and responding to changes in a client's clinical condition;

(c) A standard of acceptable and unacceptable parameters for client's clinical parameters, which can be adjusted based on the client's condition;

(d) How monitoring staff will respond to abnormal parameters for client's vital signs, symptoms and/or lab results;

(e) The monitoring, tracking and responding to changes in client's clinical condition;

(f) The process for notifying the prescribing physician for significant changes in the client's clinical signs and symptoms;

(g) The prevention of unauthorized access to the system or information;

(h) System security, including the integrity of information that is collected, program integrity and system integrity;

(i) Information storage, maintenance and transmission;

(j) Synchronization and verification of patient profile data; and

(k) Notification of the client's discharge from remote patient monitoring services or the de-installation of the remote patient monitoring unit.

(8) The telemonitoring equipment must:

(a) Be capable of monitoring any data parameters in the plan of care; and

(b) Be a FDA Class II hospital-grade medical device.

(9) Monitoring of the client's data shall not be duplicated by another provider.

(10) To receive payment for the delivery of remote patient monitoring services via telehealth, the service must involve:

(a) An assessment, problem identification, and evaluation that includes:

(i) Assessment and monitoring of clinical data including, but not limited to, appropriate vital signs, pain levels and other biometric measures specified in the plan of care, and also includes assessment of response to previous changes in the plan of care; and

(ii) Detection of condition changes based on the telemedicine encounter that may indicate the need for a change in the plan of care.

(b) Implementation of a management plan through one or more of the following:

(i) Teaching regarding medication management as appropriate based on the telemedicine findings for that encounter;

(ii) Teaching regarding other interventions as appropriate to both the patient and the caregiver;

(iii) Management and evaluation of the plan of care including changes in visit frequency or addition of other skilled services;

(iv) Coordination of care with the ordering health care provider regarding telemedicine findings;

(v) Coordination and referral to other medical providers as needed; and

(vi) Referral for an in-person visit or the emergency room as needed.

(11) The telemedicine equipment and network used for remote patient monitoring services should meet the following requirements:

(a) Comply with applicable standards of the United States Food and Drug Administration;

(b) Telehealth equipment be maintained in good repair and free from safety hazards;

(c) Telehealth equipment be new or sanitized before installation in the patient's home setting;

(d) Accommodate non-English language options; and

(e) Have 24/7 technical and clinical support services available for the patient user.

(12) All health insurance and employee benefit plans in this state must provide coverage and reimbursement for the asynchronous telemedicine services of store-and-forward telemedicine services and remote patient monitoring services based on the criteria set out in this section. Store-and-forward telemedicine services shall be reimbursed to the same extent that the services would be covered if they were provided through in-person consultation.

(13) Remote patient monitoring services shall include reimbursement for a daily monitoring rate at a minimum of Ten Dollars ($10.00) per day each month and Sixteen Dollars ($16.00) per day when medication adherence management services are included, not to exceed thirty-one (31) days per month. These reimbursement rates are only eligible to Mississippi-based telehealth programs affiliated with a Mississippi health care facility.

(14) A one-time telehealth installation/training fee for remote patient monitoring services will also be reimbursed at a minimum rate of Fifty Dollars ($50.00) per patient, with a maximum of two (2) installation/training fees/calendar year. These reimbursement rates are only eligible to Mississippi-based telehealth programs affiliated with a Mississippi health care facility.

(15) No geographic restrictions shall be placed on the delivery of telemedicine services in the home setting other than requiring the patient reside within the State of Mississippi.

(16) Health care providers seeking reimbursement for store-and-forward telemedicine services must be licensed Mississippi providers that are affiliated with an established Mississippi health care facility in order to qualify for reimbursement of telemedicine services in the state. If a service is not available in Mississippi, then a health insurance or employee benefit plan may decide to allow a non-Mississippi-based provider who is licensed to practice in Mississippi reimbursement for those services.

(17) A health insurance or employee benefit plan may charge a deductible, co-payment, or coinsurance for a health care service provided through store-and-forward telemedicine services or remote patient monitoring services so

long as it does not exceed the deductible, co-payment, or coinsurance applicable to an in-person consultation.

(18) A health insurance or employee benefit plan may limit coverage to health care providers in a telemedicine network approved by the plan.

(19) Nothing in this section shall be construed to prohibit a health insurance or employee benefit plan from providing coverage for only those services that are medically necessary, subject to the terms and conditions of the covered person's policy.

(20) In a claim for the services provided, the appropriate procedure code for the covered service shall be included with the appropriate modifier indicating telemedicine services were used. A "GQ" modifier is required for asynchronous telemedicine services such as store-and-forward and remote patient monitoring.

(21) The originating site is eligible to receive a facility fee, but facility fees are not payable to the distant site.

**HISTORY: Laws, 2014, ch. 436, § 1, eff from and after July 1, 2014; Laws, 2021, ch. 305, § 1, eff from and after July 1, 2021.**

**Amendment Notes —** The 2021 amendment, in (5), deleted former (b), which read: "Have a recent history of costly service use due to one or more chronic conditions as evidenced by two (2) or more hospitalizations, including emergency room visits, in the last twelve (12) months; and," redesignated former (c) as (b), and made a related change; and in (6), rewrote the introductory paragraph, which read: "A remote patient monitoring prior authorization request form must be submitted to request telemonitoring services. The request must include the following."

# CHAPTER 11.

# AUTOMOBILE INSURANCE



## ARTICLE 1.

## CANCELLATION OR NONRENEWAL OF POLICY.



### § 83-11-1. Definitions.

As used in this article:

(a) "Policy" means an automobile liability, automobile physical damage, or automobile collision policy, or any combination thereof, delivered or issued for delivery in this state, insuring a single individual, or husband and wife

resident of the same household, as named insured and under which the insured vehicles therein designated are of the following types only:

(i) A motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance for passengers, nor rented to others; or

(ii) Any other four-wheel motor vehicle with a load capacity of fifteen hundred (1500) pounds or less which is not used in the occupation, profession, or business of the insured; provided, however, that this article shall not apply 1. to any policy issued under an automobile assigned risk plan, 2. to any policy insuring more than four (4) automobiles, or 3. to any policy covering garage, automobile sales agency, repair shop, service station, or public parking place operation hazards.

(b) "Automobile liability coverage" includes only coverage of bodily injury and property damage liability, medical payments, and uninsured motorist coverage.

(c) "Automobile physical damage coverage" includes all coverage of loss or damage to an automobile insured under the policy except loss or damage resulting from collision or upset.

(d) "Automobile collision coverage" includes all coverage of loss or damage to an automobile insured under the policy resulting from collision or upset.

(e) "Renewal" or "to renew" means the issuance and delivery by an insurer of a policy providing the same or substantially similar coverage replacing at the end of the policy period a policy previously issued and delivered by the same insurer or a licensed affiliate, or the issuance and delivery of a certificate of notice extending the term of a policy beyond its policy period or term; provided, however, that any policy with a policy period or term of less than six (6) months shall for the purpose of this article be considered as if written for a policy period or term of six (6) months. Any policy written for a term longer than one (1) year or any policy with no fixed expiration date shall, for the purpose of this article, be considered as if written for successive policy periods or terms of one (1) year; and such policy may be terminated at the expiration of any annual period upon giving thirty (30) days' notice of cancellation prior to such anniversary date. Such cancellation shall not be subject to any other provisions of this article.

(f) "Nonpayment of premium" means failure of the named insured to discharge when due any of his obligations in connection with the payment of premiums on a policy, or any installment of such premium, whether the premium is payable directly to the insurer or its agents or indirectly under any premium finance plan or extension of credit.

(g) "Affiliate transfer" is when an insurer transfers, at renewal or policy expiration, its personal or commercial lines insurance policies to an affiliated licensed insurer that is a member of the same insurance group or same holding company as the transferring insurer. The issuance of a replacement policy form providing the same or substantially similar coverage issued by the same insurer, or the transfer of personal or commercial insurance

policies to a licensed affiliate insurer that will issue the same or substantially similar policy, are considered a renewal and will not be treated as a cancellation or nonrenewal. The affiliate transfer must be to a licensed affiliate insurer that has been determined by the commissioner to have the same or better financial strength as the transferring insurer. The policy transfer must be selected on a nondiscriminatory basis.

(h) "Substantially similar" means a policy that provides the same basic coverages but may add, alter or eliminate incidental coverages and may provide coverages using different textual language.

**HISTORY: Codes, 1942, § 5670.8-101; Laws, 1970, ch. 450, § 1, eff 90 days after passage (approved April 2, 1970); Laws, 2018, ch. 312, § 1, eff from and after July 1, 2018.**

**Amendment Notes** — The 2018 amendment redesignated former (a)(1) and (2) as (a)(i) and (ii) and former (a)(2)(i) through (iii) as (a)(ii)1 through 3; inserted "providing the same or substantially similar coverage" and "or a licensed affiliate" in the first sentence of (e); and added (g) and (h).

## § 83-11-5. Notice of cancellation.

### JUDICIAL DECISIONS

**1. In general.**

Insurer had an arguable reason for its actions of canceling the insurance coverage after the insurer failed to pay a monthly premium because the Commissioner of Insurance's interpretation of Miss. Code Ann. § 83-11-5, that it was understood as a requirement of reminding customers at least 10 days in advance that they should either timely pay their premiums or make alternative arrangements before the coverage in place expires, was not contrary to the statute's plain language. Keys v. Safeway Ins. Co., 2011 U.S. Dist. LEXIS 13197 (S.D. Miss. Feb. 9, 2011).

## § 83-11-7. Non-renewal.

No insurer shall fail to renew a policy unless it shall mail or deliver to the named insured, at the address shown in the policy and to the named creditor loss payee, at least thirty (30) days' advance notice of its intention not to renew. This section shall not apply if there is no named creditor loss payee and:

(a) If the insurer has manifested its willingness to renew, subject to certain specified conditions which are not met by the insured; nor

(b) If the insured has manifested its unwillingness to renew; nor

(c) In case of nonpayment of premium; nor

(d) In case of failure to make timely payment of dues to, or to maintain membership in good standing with, a designated association, corporation or other organization where the original issue of such policy or renewal was dependent upon such membership; provided that, notwithstanding the failure of an insurer to comply with this section, the policy shall terminate on the effective date of any other insurance policy with respect to any automobile designated in both policies.

A notice of nonrenewal is not required when a replacement policy form is

issued by the same insurer or when an insured is transferred to a licensed affiliate of the insurer, so long as the transfer or replacement results in the same or substantially similar coverage. Whenever a replacement policy form is issued by the same insurer, or when transfer of an insured to a licensed affiliate occurs documents signed by the insured are applicable to the replacement policy form, the coverage transferred to a licensed affiliate insurer, or both, and remain valid and enforceable.

Whenever a replacement policy form providing the same or substantially similar coverage is issued by the same insurer, or by a licensed affiliate insurer, such insurer shall mail or deliver to the policyholder, at least thirty (30) days in advance of the effective date of renewal, written notice of any terms or conditions that are less favorable to the policyholder.

A transferring insurer shall notify the Mississippi Insurance Department at least forty-five (45) days in advance of notifying a policyholder that its personal or commercial lines insurance policies will be transferred to another licensed insurer within the same insurance group or same holding company. The notice shall include the name of insurer transferring the personal or commercial lines policies and the name and financial rating of the insurer receiving the transferred personal or commercial lines policies.

A transferring insurer shall provide the policyholder written notice of the policy transfer at least thirty (30) days prior to expiration of the policy term and shall include the financial rating of the insurer receiving the transferred policy. Such notice must be provided to the policyholder with the notice of renewal premium at least thirty (30) days before the effective date of the transfer.

Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal, and if a policy shall be cancelled as authorized by this article prior to such policy's renewal, such cancellation shall terminate any right of renewal conferred by this article.

**HISTORY: Codes, 1942, § 5670.8-104; Laws, 1970, ch. 450, § 4; Laws, 2006, ch. 480, § 3, eff from and after July 1, 2006; Laws, 2018, ch. 312, § 2, eff from and after July 1, 2018.**

**Amendment Notes** — The 2018 amendment added the second through fifth paragraphs.

## JUDICIAL DECISIONS

**1. In general.**

Failure of an insurer to provide the bank, which loaned money to the insured for the purchase of an automobile, with notice of the insurer's non-renewal of the insured's automobile insurance policy did not provide the insured with any rights or cause of action regarding the policy coverage. Alexander v. Aig Agency Auto, Inc, 138 So. 3d 190, 2013 Miss. App. LEXIS 865 (Miss. Ct. App. 2013).

## § 83-11-9. Proof of notice.

### JUDICIAL DECISIONS

**1. In general.**

Insurer was entitled to summary judgment on an insured's coverage claim because the certificate of mailing which the insurer provided was conclusive proof of the insured's receipt of notice of the cancellation by the insurer of the insured's automobile insurance policy, and the insured failed to provide sufficient evidence to create a triable issue of fact to overcome the presumption of notice. Alexander v. Aig Agency Auto, Inc, 138 So. 3d 190, 2013 Miss. App. LEXIS 865 (Miss. Ct. App. 2013).

# ARTICLE 3.

# UNINSURED MOTORIST COVERAGE.

Sec.



## § 83-11-101. Automobile liability policies to contain "uninsured motorist" and property damage provisions; rejection of uninsured motorist coverage.

(1) No automobile liability insurance policy or contract shall be issued or delivered after January 1, 1967, unless it contains an endorsement or provisions undertaking to pay the insured all sums which he shall be legally entitled to recover as damages for bodily injury or death, or would be legally entitled to recover as damages for bodily injury or death but for the immunity provided under the Mississippi Tort Claims Act, from the owner or operator of an uninsured motor vehicle, within limits which shall be no less than those set forth in the Mississippi Motor Vehicle Safety Responsibility Law, as amended, under provisions approved by the Commissioner of Insurance; however, at the option of the insured, the uninsured motorist limits may be increased to limits not to exceed those provided in the policy of bodily injury liability insurance of the insured or such lesser limits as the insured elects to carry over the minimum requirement set forth by this section. The coverage herein required shall not be applicable where any insured named in the policy shall reject the coverage in writing and provided further, that unless the named insured requests such coverage in writing, such coverage need not be provided in any renewal policy, any replacement policy with the same or substantially similar terms and conditions issued by the same insurer, and any transferred policy with the same or substantially similar terms and conditions issued by a licensed affiliate of the original insurer where the named insured had rejected the coverage in connection with a policy previously issued to him by the same insurer or a licensed affiliate of the original insurer in the same holding company.

(2) No automobile liability insurance policy or contract shall be issued or delivered after January 1, 1980, unless it contains an endorsement or provisions undertaking to pay the insured all sums which he shall be legally entitled to recover as damages for property damage, or would be legally entitled to recover as damages for property damage but for the immunity provided under the Mississippi Tort Claims Act, from the owner or operator of an uninsured motor vehicle, within limits which shall be no less than those set forth in the Mississippi Motor Vehicle Safety Responsibility Law, as amended, under provisions approved by the Commissioner of Insurance; however, at the option of the insured, the uninsured motorist limits may be increased to limits not to exceed those provided in the policy of property damage liability insurance of the insured or such lesser limits as the insured elects to carry over the minimum requirement set forth by this section. The coverage herein required shall not be applicable where any insured named in the policy shall reject the coverage in writing and provided further, that unless the named insured requests such coverage in writing, such coverage need not be provided in any renewal policy, any replacement policy with the same or substantially similar terms and conditions issued by the same insurer, and any transferred policy with the same or substantially similar terms and conditions issued by a licensed affiliate of the original insurer where the named insured had rejected the coverage in connection with a policy previously issued to him by the same insurer or a licensed affiliate of the original insurer in the same holding company.

The property damage provision may provide an exclusion for the first Two Hundred Dollars ($200.00) of such property damage; however, the uninsured motorist provision need not insure any liability for property damage, for which loss the policyholder has been compensated by insurance or otherwise.

(3) The insured may reject the property damage liability insurance coverage required by subsection (2) and retain the bodily injury liability insurance coverage required by subsection (1), but if the insured rejects the bodily injury liability coverage he may not retain the property damage liability coverage. No insured may have property damage liability insurance coverage under this section unless he also has bodily injury liability insurance coverage under this section.

(4) In the course of the sale or issuance of any automobile liability insurance policy, insurers shall inform the named insured or applicant, on a form approved by the Department of Insurance, of the benefits of and reasons for electing to purchase uninsured motorist coverage. If the insured named in the policy wishes to reject uninsured motorist coverage, such form shall be signed by or on behalf of the named insured. If this form is signed by or on behalf of the named insured, it is binding upon all persons insured by the automobile liability insurance policy and it shall be presumed that there was an informed, knowing rejection and waiver of uninsured motorist coverage.

**HISTORY: Codes, 1942, § 8285-51; Laws, 1966, ch. 524, § 1; Laws, 1974, ch. 393; Laws, 1979, chs. 429 § 2, 432; Laws, 2014, ch. 428, § 1, eff from and after July 1,**

**2014; Laws, 2018, ch. 312, § 5, eff from and after July 1, 2018; Laws, 2020, ch. 305, § 1, eff from and after passage (approved June 10, 2020).**

**Amendment Notes —** The 2014 amendment added (4).

The 2018 amendment inserted "any replacement policy with the same or substantially similar terms...licensed affiliate of the original insurer," and added "or a licensed affiliate of the original insurer in the same holding company" in the last sentence of (1) and the last sentence of the first paragraph of (2).

The 2020 amendment, effective June 10, 2020, inserted "or would be legally entitled to recover as damages for bodily injury or death but for the immunity provided under the Mississippi Tort Claims Act" in the first sentence of (1); and inserted "or would be legally entitled to recover as damages for property damage but for the immunity provided under the Mississippi Tort Claims Act" in the first sentence of (2).

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
15. Waiver of uninsured motorist coverage.

**1. In general.**

Because plaintiff's negligence claim against a county failed as a matter of law, so did his claim against his insurance carrier for uninsured motorist benefits. Plaintiff's failure to make a prima facie showing of negligence disposed of all claims against both defendants. Robinson v. Holmes Cty., 284 So. 3d 730, 2019 Miss. LEXIS 348 (Miss. 2019).

**15. Waiver of uninsured motorist coverage.**

Fact issues as to whether an insurance agent explained the costs and benefits of uninsured motorist (UM) coverage and whether the insureds gave a knowing and intelligent waiver of UM coverage precluded summary judgment on a UM claim where the insureds testified they did not read the provision before signing a waiver and that the agent did not explain the waiver to them. Honeycutt v. Coleman, 120 So. 3d 358, 2013 Miss. LEXIS 315 (Miss. 2013).

Any waiver of uninsured motorist (UM) coverage must be made knowingly, intelligently, and in writing, with the insurer bearing the burden of proof, which may be met by establishing that the insurer provided an explanation, appropriate to the client, of UM coverage or that the client was fully knowledgeable through other sources of the purposes and benefits of UM coverage; any document signed by the client that states that an explanation was given to the client may be considered, but is not dispositive. Whether a client made a knowing and intelligent waiver of UM coverage is a question of fact for the fact-finder. Honeycutt v. Coleman, 120 So. 3d 358, 2013 Miss. LEXIS 315 (Miss. 2013).

## § 83-11-102. Purchase of single-limit, nonstacking uninsured motorist insurance coverage for four or more vehicles in lieu of uninsured motorists coverage for each vehicle.

(1) An insured in an automobile liability policy that covers four (4) or more vehicles may elect to purchase, and an insurer may offer, single-limit, nonstacking uninsured motorist insurance coverage covering all vehicles listed in the policy for a single amount of uninsured motorist coverage. The single uninsured motorist coverage limit must be in an amount of no less than the liability limits required under the Mississippi Motor Vehicle Safety Responsibility Law for four (4) vehicles combined. No matter how many vehicles are

listed in or covered by the policy, the policy shall provide only one (1) single limit of uninsured motorist coverage to an injured person, or for property damage, or both, for any one (1) accident. The single limit of uninsured motorist coverage provided by the single-limit, nonstacking uninsured motorist insurance coverage may, where appropriate, be aggregated with or stacked with uninsured motorist insurance coverage available from other policies.

(2) In the course of the sale or issuance of single-limit, nonstacking uninsured motorist insurance coverage, insurers shall inform the named insured or applicant, on a form approved by the Department of Insurance, of the limitation on stacking imposed and that such coverage is an alternative to coverage without such limitation, and such form shall be signed by or on behalf of the named insured or applicant. If this form is signed by or on behalf of a named insured or applicant, it is binding upon all persons insured by the uninsured motorist coverage and it shall be presumed that there was an informed, knowing acceptance of such limitation. When the named insured or applicant has initially accepted such limitation on stacking, such acceptance shall apply to any policy from the same insurer, including sister insurers in the same holding company, which renews the coverage, extends the coverage or changes covered vehicles unless and until the named insured requests in writing a change to stackable uninsured motorist coverage. Endorsements to the coverage language that do not change the uninsured motorist coverage language shall not be considered a new policy for purposes of determining whether a new acceptance form is necessary.

**HISTORY: Laws, 2002, ch. 390, § 1; Laws, 2013, ch. 507, § 1, eff from and after July 1, 2013.**

**Amendment Notes —** The 2013 amendment substituted "four (4)" for "ten (10)" in the first and second sentences of (1).

## § 83-11-103. Definitions.

### JUDICIAL DECISIONS

#### ANALYSIS

6. Aggregating or "stacking" of benefits.
9. Miscellaneous.

**6. Aggregating or "stacking" of benefits.**

Passenger was permitted to stack the uninsured motorist (UM) benefits of other vehicles covered under the same insurance policy as the host car because Mississippi allowed insurers to include express anti-stacking provisions in insurance policy contracts, but the insurer did not include such a provision in the insurance policy. Therefore, the absence of an express prohibition on stacking allowed the passenger to stack the UM benefits of the vehicles insured under the same policy. Brewer v. Miss. Farm Bureau Cas. Ins. Co., — So. 3d —, 2021 Miss. App. LEXIS 225 (Miss. Ct. App. May 25, 2021).

**9. Miscellaneous.**

In a coverage dispute, a brother was not entitled to uninsured motorist benefits under a sister's policy with an insurer because the brother was not a resident of the sister's household nor she in his household, and as such, the brother was not an "insured" as defined in the Uninsured Motorist Act, Miss. Code Ann. § 83-11-103(b); although the sister helped take care of the brother in his residence on a

periodic basis after an accident, the sister never intended to abandon her residence, which was across the street from the brother's. Robinson v. State Farm Mut. Auto. Ins. Co., 52 So. 3d 416, 2010 Miss. App. LEXIS 560 (Miss. Ct. App. 2010), cert. dismissed, 56 So. 3d 574, 2011 Miss. LEXIS 159 (Miss. 2011).

## § 83-11-111. Excess insurance coverage.

### JUDICIAL DECISIONS

**1. In general.**

Passenger was permitted to stack the uninsured motorist (UM) benefits of other vehicles covered under the same insurance policy as the host car because Mississippi allowed insurers to include express anti-stacking provisions in insurance policy contracts, but the insurer did not include such a provision in the insurance policy. Therefore, the absence of an express prohibition on stacking allowed the passenger to stack the UM benefits of the vehicles insured under the same policy. Brewer v. Miss. Farm Bureau Cas. Ins. Co., — So. 3d —, 2021 Miss. App. LEXIS 225 (Miss. Ct. App. May 25, 2021).

# ARTICLE 9.

# REPAIRS TO DAMAGED VEHICLES.

## § 83-11-501. Requirement that repairs be made at particular shop prohibited; insurer's payment of lowest fair amount in geographic or trade area.

### JUDICIAL DECISIONS

**1. Priority Repair Option program.**

District court properly dismissed body shops' claims under this statute because body shops did not allege that insurance companies conditioned payment of claim on repairs being made by particular shop. Auto. Alignment & Body Serv. v. State Farm Mut. Auto. Ins. Co., 953 F.3d 707, 2020 U.S. App. LEXIS 7044 (11th Cir. Fla. 2020).

# ARTICLE 11.

# PAYMENT OF CLAIMS.

Sec.

## § 83-11-551. Addition of name of business repairing automobile or lienholder as payee on check; obtaining title where there is total loss settlement; release of vehicle by auction firm or automotive dismantler to owner or lienholder if insurer does not take ownership; lien-free salvage certificate of title.

(1) In cases in which there is not a total loss, when there are one or more lienholders shown in the policy or confirmed in writing by the insured before the loss, an insurer paying a claim under automobile physical damage coverage or automobile collision coverage, as such terms are defined in Section 83-11-1, shall add as a payee on the check, in addition to the name of the insured, the name of the business or other entity repairing the automobile or the name of the lienholder or lienholders.

(2) In cases of a total loss, when there are one or more lienholders (a) shown in the policy, (b) confirmed in writing by the insured before the loss, or (c) shown on the vehicle title recorded with the Mississippi Department of Revenue, an insurer paying a claim under automobile physical damage coverage or automobile collision coverage, as such terms are defined in Section 83-11-1, shall add as a payee on the check, in addition to the name of the insured, the name of the lienholder or lienholders.

(3) If the insured disputes the existence of any lien, it is the insured's responsibility to have the liens released. When payment is made to a lienholder, the lienholder shall pay any balance owed to the debtor within thirty (30) days after receipt of the check. However, in the case of a total loss, the insurer may issue separate checks to the lienholder and to the insured for the amount of each party's financial interest in the vehicle. This section shall not apply to the repair or replacement of glass in the vehicle.

(4) If an insurance company makes a total loss settlement on a motor vehicle, the owner or lienholder of the motor vehicle shall forward the properly endorsed certificate of title to the insurance company within fifteen (15) days after receipt of the settlement funds.

(5)(a) If an insurance company is unable to obtain the properly endorsed certificate of title within fifteen (15) days after disbursing a total loss settlement payment for a motor vehicle that does not have a lien or encumbrance, the insurance company or its agent may request the Department of Revenue to issue a salvage certificate of title or a parts-only certificate of title for the vehicle.

(b) The request under paragraph (a) of this subsection shall:

(i) Be submitted on each form required by and provided by the Department of Revenue which may be completed by the insurance company or its agent;

(ii) Attest on the form required in subparagraph (i) that the insurance company or its agent has made at least two (2) attempts to obtain the certificate of title;

(iii) Include any fees applicable to the issuance of a salvage certificate of title or a parts-only certificate of title; and

(iv) Be signed under penalty of perjury.

(c) Notice under paragraph (b) of this subsection shall be provided concurrently with the payment of the claim or by either first-class mail to the last-known address or other commercially available delivery service or electronic means, including electronic mail or posting on an electronic network or site that is accessible to the vehicle owner via the internet by using a mobile application, computer, mobile device, tablet or any other electronic device.

(6)(a) If an insurance company or its agent is unable to obtain the properly endorsed certificate of title within fifteen (15) days after disbursing a total loss settlement payment for a motor vehicle that has a lien or encumbrance, the insurance company or its agent shall attest to the Department of Revenue that the lienholder's interest was protected in the total loss indemnity payment for the claim.

(b) The documentation under paragraph (a) of this subsection shall be:

(i) Submitted with a request for a salvage certificate of title or a parts-only certificate of title for the vehicle; and

(ii) The requirements under subsection (5)(b) of this section.

(7) Upon receipt of a properly endorsed certificate of title or a properly executed request under subsection (5) of this section, the Department of Revenue shall issue a salvage certificate of title or a parts-only certificate of title for the vehicle in the name of the insurance company.

(8) The Department of Revenue may promulgate rules, regulations and forms for the administration of subsections (4) through (6) of this section.

(9)(a) If an insurer requests an auction firm, the primary business of which is the sale of salvage vehicles on behalf of insurers, or an automotive dismantler as defined in Section 27-19-303(h), to take possession of a vehicle that is the subject of an insurance claim and subsequently the insurer does not take ownership of the vehicle, the insurer may direct the auction firm or the automotive dismantler to release the vehicle to the owner or lienholder. The insurer shall provide the auction firm or the automotive dismantler a release statement authorizing the auction firm or the automotive dismantler to release the vehicle to the vehicle's owner or lienholder.

(b) Upon receiving a release statement from an insurer, the auction firm or the automotive dismantler shall send notice to the owner and any lienholder of the vehicle informing the owner or lienholder that the vehicle is available for pick up. The notice shall include an invoice for any outstanding charges owed to the auction firm or the automotive dismantler. The notice shall inform the owner and any lienholder that the owner or lienholder has thirty (30) days from the date of the notice, and upon payment of applicable charges owed to the auction firm or the automotive dismantler, to pick up the vehicle from the auction firm or the automotive dismantler. Notice under this subsection must be sent by certified mail to the last-known address or by another commercially available delivery service providing proof of delivery to the address on record with the department.

(c) If the owner or any lienholder of the vehicle does not pick up the vehicle within thirty (30) days after notice was sent to the owner and any

lienholder in accordance with this subsection, the vehicle shall be considered abandoned, the vehicle's certificate of title is deemed to be assigned to the auction firm or the automotive dismantler, and the auction firm or the automotive dismantler, without surrendering the certificate of title, may request on a form provided by the department that the department shall issue a lien-free salvage certificate of title or a parts-only certificate of title for the vehicle. The request shall be accompanied by a copy of the notice required by this subsection and proof of delivery of the notice required by this subsection sent to the owner and any lienholder. Notwithstanding any outstanding liens against the vehicle, the department shall issue a lien-free salvage certificate of title or a parts-only certificate of title for the vehicle to the auction firm in possession of the vehicle.

**HISTORY: Laws, 2007, ch. 594, § 1; Laws, 2009, ch. 461, § 1; Laws, 2012, ch. 392, § 1; Laws, 2014, ch. 435, § 1; Laws, 2017, ch. 318, § 1, eff from and after July 1, 2017; Laws, 2020, ch. 306, § 1, eff from and after July 1, 2020; Laws, 2021, ch. 366, § 1, eff from and after July 1, 2021.**

**Amendment Notes —** The 2012 amendment substituted "Department of Revenue" for "Mississippi State Tax Commission" in (2); and added (4) through (9).

The 2014 amendment, in (9), substituted "from and after" for "on" and extended the repealer provision from "July 1, 2014" to "July 1, 2017."

The 2017 amendment extended the date of the repealer for this section by substituting "July 1, 2020" for "July 1, 2017" in (9).

The 2020 amendment deleted former (9), which repealed the section effective July 1, 2020.

The 2021 amendment, in (5), substituted "fifteen (15) days" for "thirty (30) days" in (a), added "which may be completed by the insurance company or its agent" in (b)(i), rewrote (b)(ii), which read: "Document that the insurance company has made at least two (2) written attempts to obtain the certificate of title and include the documentation with the request," and added (c); in (6), inserted "or its agent," substituted "fifteen (15) days" for "thirty (30) days," "attest" for "submit documentation," and deleted "from the claims file" following "Department of Revenue" and "establishes" preceding "the lienholder's interest"; and added (9).

# CHAPTER 13.

# FIRE INSURANCE

## § 83-13-1. Reinsurance.

### RESEARCH REFERENCES

**ALR.**

Who May Enforce Liability of Reinsurer. 87 A.L.R.6th 319.

# CHAPTER 17.

# INSURANCE AGENTS, SOLICITORS, OR ADJUSTERS



## ARTICLE 1.

## GENERAL PROVISIONS.



### § 83-17-1. Agent defined.

**HISTORY: Codes, 1892, § 2342; 1906, § 2615; Hemingway's 1917, § 5078; 1930, § 5196; 1942, § 5706; Laws, 1989, ch. 543, § 1; Laws, 2001, ch. 510, § 31; Laws, 2009, ch. 448, § 5; brought forward without change, Laws, 2015, ch. 364, § 5, eff from and after July 1, 2015.**

**Editor's Notes —** This section was brought forward without change by Section 5, Chapter 364, Laws of 2015, effective from and after July 1, 2015. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of this section, it is not reprinted in this supplement.

**Amendment Notes —** The 2015 amendment brought section forward without change.

#### JUDICIAL DECISIONS

**4. Agents' knowledge as imputable to insurer-generally.**

Insurer was not aware that there was a lienholder on an insured vehicle because, although knowledge acquired by a soliciting agent in the course of the agent's employment in soliciting insurance and preparing and transmitting applications was ordinarily imputed to the insurer, the agent never said that the agent was aware that there was a lienholder. Alexander v. Aig Agency Auto, Inc, 138 So. 3d 190, 2013 Miss. App. LEXIS 865 (Miss. Ct. App. 2013).

### § 83-17-7. Commission to unauthorized agent unlawful; employees or authorized agents of limited license rental car company may receive commission under rental car company's limited license.

(1) It shall be unlawful for any insurance company or any insurance agent to pay, directly or indirectly, any commission, brokerage or other valuable consideration on account of any policy or policies written on risks in this state to any person, agent, firm or corporation not duly licensed as an insurance

agent in this state, except that property and other risks of nonresident persons, and of foreign corporations not qualified in this state, may be insured by brokers or other agents duly licensed in other states.

It shall be lawful, however, for an insurance company or any insurance agent to pay, directly or indirectly, to the surviving spouse or heirs of a deceased licensed insurance agent in this state any commissions or other valuable consideration to which the deceased agent would be entitled, whether such surviving spouse or heir is or is not a licensed agent.

It shall be lawful for an insurance agent, agency or affiliate to pay a referral fee to any unlicensed employee of the agent, agency or affiliate when the employee refers a prospective insured to the licensed agent or agency. The referral fee shall be a one-time nominal fee of a fixed dollar amount for each referral customer. The payment of any referral fee shall not depend on whether the referral results in a sale of any insurance products. Furthermore, the referral fee shall not be based on a percentage of any premiums or commissions collected by the licensed agent. The referral fee shall not be paid, either directly or indirectly, to the prospective insured.

(2) Notwithstanding any provision in this section to the contrary, employees and authorized agents of a limited license rental car company:

(a) May receive compensation for activities under the rental car company's limited license that is incidental to their overall compensation, including, but not limited to, commissions, bonuses and other valuable consideration;

(b) May offer, sell or solicit, in connection with and incidental to the rental of rental cars, the kinds of insurance specified in Section 83-17-63(1)(h) under the limited license of the rental car company; and

(c) Shall not require any additional licensing under this chapter or any other provision of Title 83 relating to paragraph (a) or (b) above.

(3) The Commissioner of Insurance may promulgate rules and regulations necessary to carry out the provisions of this section.

**HISTORY: Codes, 1942, § 5710; Laws, 1938, ch. 194; Laws, 1975, ch. 372; Laws, 1999, ch. 474, § 1; Laws, 2001, ch. 433, § 3; Laws, 2006, ch. 315, § 1; Laws, 2010, ch. 419, § 2; Laws, 2015, ch. 364, § 1, eff from and after July 1, 2015.**

**Amendment Notes** — The 2015 amendment designated the former first through third paragraphs as (1) and the former last paragraph as (3); and added (2).

## § 83-17-25. Duration of privilege licenses.

### JUDICIAL DECISIONS

**1. Suspension of license.**

When a contractor sued insurers and their agent for negligently issuing a bid bond without authority, due to expiration of the agent's certificate for failure to pay a renewal fee, summary judgment erred because the agent was unauthorized to issue the bond, which had to be valid on the date issued but was null and void, and a later payment of the fee and reinstatement of the agent did not retroactively validate the bond, so fact questions existed as to the negligent issuance of the bond contrary to a duty to the contractor.

King Metal Bldgs., Inc. v. Renasant Ins., Inc., 159 So. 3d 567, 2014 Miss. App. LEXIS 377 (Miss. Ct. App. 2014), cert. denied, 158 So. 3d 1153, 2015 Miss. LEXIS 142 (Miss. 2015).

## ARTICLE 2.

## LICENSING OF INSURANCE PRODUCERS.

Sec.



### § 83-17-53. Definitions.

The following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity.

(b) "Commissioner" means the Commissioner of Insurance.

(c) "Home state" means the District of Columbia and any state or territory of the United States in which an insurance producer maintains his or her principal place of residence or principal place of business and is licensed to act as an insurance producer.

(d) "Insurance" means any of the lines of authority in Section 83-19-1.

(e) "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance.

(f) "Insurer" means that as defined in Section 83-6-1.

(g) "License" means a document issued by the commissioner authorizing a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent or inherent, in the holder to represent or commit an insurance carrier.

(h) "Limited line credit insurance" includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage

life, mortgage guaranty, mortgage disability, guaranteed automobile protection (gap) insurance and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the commissioner determines should be designated a form of limited line credit insurance.

(i) "Limited line credit insurance producer" means a person who sells, solicits or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group or individual policy.

(j) "Limited lines insurance" means those lines of insurance defined in Section 83-19-1, Class 1(b), (e), (p) and (q) and Section 83-19-1, Class 2(d), Section 83-17-63 (1)(h), (i), (j), (k) and (*l*), or any other line of insurance that the commissioner deems necessary to recognize for the purposes of complying with Section 83-17-65(5).

(k) "Limited lines producer" means a person authorized by the commissioner to sell, solicit or negotiate limited lines insurance.

(*l*) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract, if the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

(m) "Person" means an individual or a business entity.

(n) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

(o) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

(p) "Terminate" means the cancellation of the relationship between an insurance producer and the insurer or the termination of a producer's authority to transact insurance.

(q) "Uniform business entity application" means the current version of the NAIC uniform business entity application for resident and nonresident business entities.

(r) "Uniform application" means the current version of the NAIC uniform application for resident and nonresident producer licensing.

**HISTORY: Laws, 2001, ch. 510, § 2; Laws, 2009, ch. 448, § 7, eff from and after Nov. 1, 2009; Laws, 2019, ch. 324, § 1, eff from and after July 1, 2019.**

**Amendment Notes —** The 2019 amendment inserted "and (*l*)" in (j).

## § 83-17-55. License required to sell, solicit or negotiate insurance; requirements for issuing license to partnerships; employees or authorized agents of limited license rental car company may offer, sell or solicit certain insurance under limited license of rental car company.

(1) A person shall not sell, solicit or negotiate insurance in this state for

any class or classes of insurance unless the person is licensed for that line of authority in accordance with this article.

(2) No license shall be issued to a partnership unless all the partners thereof satisfy the same requirements in every respect for an individual producer provided for in this article.

(3) Notwithstanding any provision in this section to the contrary, employees and authorized agents of a limited license rental car company:

(a) May receive compensation for activities under the rental car company's limited license that is incidental to their overall compensation, including, but not limited to, commissions, bonuses and other valuable consideration;

(b) May offer, sell or solicit, in connection with and incidental to the rental of rental cars, the kinds of insurance specified in Section 83-17-63(1)(h) under the limited license of the rental car company; and

(c) Shall not require any additional licensing under this chapter or any other provision of Title 83 relating to paragraph (a) or (b) above.

**HISTORY: Laws, 2001, ch. 510, § 3; Laws, 2015, ch. 364, § 2, eff from and after July 1, 2015.**

**Amendment Notes** — The 2015 amendment added (3).

## § 83-17-63. Qualification for license in certain lines of authority; license to remain in effect absent revocation, suspension, or failure to pay annual fee; reinstatement and renewal; waiver of renewal requirements due to extenuating circumstances; information to be included on license; change of address.

(1) Unless denied licensure under Section 83-17-71, persons who have met the requirements of Sections 83-17-59 and 83-17-61, shall be issued an insurance producer license. An insurance producer may receive qualification for a license in one or more of the following lines of authority:

(a) Life: insurance coverage on human lives, including benefits of endowment and annuities and may include benefits in the event of death or dismemberment by accident and benefits for disability income.

(b) Accident and health or sickness: insurance coverage for sickness, bodily injury or accidental death and may include benefits for disability income.

(c) Property: insurance coverage for the direct or consequential loss or damage to property of every kind.

(d) Casualty: insurance coverage against legal liability, including that for death, injury or disability or damage to real or personal property.

(e) Variable life and variable annuity products: insurance coverage provided under variable life insurance contracts and variable annuities.

(f) Personal lines: property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes.

(g) Credit: limited line credit insurance.

(h)(i) Car rental: limited line insurance offered, sold or solicited in connection with and incidental to the rental of rental cars, whether at the rental office or preselection of coverage in master, corporate or individual agreements that is nontransferrable, applies only to the rental car that is the subject of the rental agreement and is limited to the following kinds of insurance:

1. Personal accident insurance for renters and other rental car occupants, for accidental death or dismemberment, and for medical expenses resulting from an accident that occurs with the rental car during the rental period;

2. Liability insurance that provides protection to the renters and other authorized drivers of a rental car for liability arising from the operation or use of the rental car during the rental period;

3. Personal effects insurance that provides coverage to renters and other vehicle occupants for loss of, or damage to, personal effects in the rental car during the rental period;

4. Roadside assistance and emergency sickness protection insurance; or

5. Any other coverage designated by the Commissioner of Insurance.

(ii) Notwithstanding anything in this section or any other provision of law to the contrary, employees and authorized agents of a limited license rental car company:

1. May receive compensation for activities under the rental car company's limited license that is incidental to their overall compensation, including, but not limited to, commissions, bonuses and other valuable consideration;

2. May offer, sell or solicit, in connection with and incidental to the rental of rental cars, the kinds of insurance specified in this paragraph (h) under the limited license of the rental car company; and

3. Shall not require any additional licensing under this chapter or any other provision of Title 83 relating to item 1 or 2 of this subparagraph (ii).

(iii) Each limited license rental car company shall conduct a training program for its employees and authorized agents in which the employees and authorized agents being trained shall receive basic instruction about the kinds of insurance specified in this paragraph (h). Once its employees and authorized agents have been trained, each limited license rental car company shall provide supervision for these employees and authorized agents relating to their offer to, sale to, or solicitation of prospective renters of rental cars with respect to the kinds of insurance specified in this paragraph (h).

(i) Crop insurance: limited line insurance providing protection against damage to crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation, disease or other yield-reducing conditions or

perils provided by the private insurance market, or that is subsidized by the Federal Crop Insurance Corporation, including Multi-Peril Crop Insurance.

(j) Surety: limited line insurance or bond that covers obligations to pay the debts of, or answer for the default of another, including faithlessness in a position of public or private trust. For purpose of limited line licensing, surety does not include Surety Bail Bonds.

(k) Travel: limited line insurance coverage for trip cancellation, trip interruption, baggage, life, sickness and accident, disability and personal effects when limited to a specific trip and sold in connection with transportation provided by a common carrier.

(*l*) Self-storage: limited line insurance coverage for the loss or damage to personal property that occurs at a self-storage facility or when such property is in transit to or from a self-storage facility during the period of a rental agreement.

(m) Any other line of insurance permitted under state laws or regulations.

(2) An insurance producer license shall remain in effect unless revoked or suspended as long as the fee set forth in Section 27-15-87 is paid and education requirements for resident individual producers are met by the due date.

(3) An individual insurance producer who allows his or her license to lapse may, within twelve (12) months from the due date of the renewal fee, reinstate the same license without the necessity of passing a written examination. The penalty for such late renewal shall be in compliance with Section 27-15-215.

(4) A licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstances, including, but not limited to, a long-term medical disability may request a waiver of those procedures. The producer may also request a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures.

(5) The license shall contain the licensee's name, address, personal identification number and the date of issuance, the lines of authority, the expiration date and any other information the commissioner deems necessary.

(6) Licensees shall inform the commissioner by any means acceptable to the commissioner of a change of address within thirty (30) days of the change. Failure to timely inform the commissioner of a change in legal name or address shall result in a penalty under Section 83-17-71.

(7) In order to assist in the performance of the commissioner's duties, the commissioner may contract with nongovernmental entities, including the National Association of Insurance Commissioners (NAIC) or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions, including the collection of fees, related to producer licensing that the commissioner and the nongovernmental entity may deem appropriate.

**HISTORY: Laws, 2001, ch. 510, § 7; Laws, 2002, ch. 322, § 1; Laws, 2009, ch. 448, § 8; Laws, 2015, ch. 364, § 3, eff from and after July 1, 2015; Laws, 2019, ch. 324, § 2, eff from and after July 1, 2019.**

**Amendment Notes —** The 2015 amendment added (1)(h)(ii) and (iii); designated the former introductory paragraph of (1)(h) as (1)(h)(i) and redesignated former (1)(h)(i) through (1)(h)(v) as (1)(h)(i)1 through (1)(h)(i)5.

The 2019 amendment, in (1), added (*l*), redesignated former (*l*) as (m), and made minor stylistic changes.

## § 83-17-64. Limited license as insurance producer for self-storage insurance; definitions; employee or representative of licensee may act on behalf of licensee under certain circumstances.

(1) For purposes of this section, the following terms have the following meanings unless the context clearly indicates otherwise. Any terms defined in Section 85-7-121 shall have the meaning provided therein unless otherwise defined in this section.

(a) "Limited lines producer" means an individual or business entity authorized and licensed by the commissioner to offer, sell, solicit and negotiate self-storage insurance.

(b) "Occupant" means a person, his sublessee, successor or assign entitled to the use of a leased space at a self-storage facility under a rental agreement to the exclusion of others.

(c) "Owner" means the owner, operator, lessor or sublessor of a self-storage facility, an agent or any person authorized to manage the facility or to receive rent from an occupant under a rental agreement. The term "owner" shall not be construed to mean a warehouseman unless the owner issues a warehouse receipt, bill of lading or other document of title for the personal property stored.

(d) "Personal property" means any movable property not affixed to land including, but not limited to, goods, wares, merchandise, motor vehicles, watercraft, and household items and furnishings.

(e) "Rental agreement" means any written agreement or lease that establishes or modifies the terms, conditions, rules or any other provisions concerning the use and occupancy of a self-storage facility.

(f) "Self-storage facility" means a business entity that offers individual storage space to nonresident occupants who are to have their own means of access to the facility at any time for the purpose of storing and removing personal property.

(g) "Self-storage insurance" means personal property insurance offered in connection with and incidental to the lease or rental of leased space at a self-storage facility and that provides coverage to occupants for the loss of or damage to personal property that occurs at the self-storage facility or when such property is in transit to or from the self-storage facility during the period of the rental agreement.

(h) "Supervising entity" means a business entity that is a licensed insurer or insurance producer that is authorized by an insurer to supervise the administration of a self-storage insurance program.

(2) The commissioner may issue to an individual or business entity that has filed with the commissioner an application for such limited license in a

form and manner prescribed by the commissioner, a limited lines self-storage insurance producer license which authorizes the limited lines producer to offer, sell, solicit and negotiate insurance through a licensed insurer at each location where the limited lines producer conducts business.

(3) A limited lines producer may authorize any employee or representative of the licensee to act individually on behalf and under the supervision of the licensee to offer, sell, solicit and negotiate self-storage insurance under the limited lines producer's license and without the need for an individual producer's license only if the following conditions are met:

(a) The limited lines producer complies with the provisions of Section 83-17-61(2). The designated responsible licensed producer required in Section 83-1-61(2)(b), Mississippi Code of 1972, need not be an employee or owner of the self-storage facility.

(b) Written or electronic materials containing the following information must be made readily available to the purchasers of the self-storage insurance:

(i) A description of the material terms or the actual material terms of the insurance coverage;

(ii) A description of the process for filing a claim;

(iii) A description of the review or cancellation process for the insurance coverage;

(iv) A disclosure that the insurance coverage may provide a duplication of coverage already provided by an existing policy of insurance;

(v) A statement that the purchase by the occupant of the insurance coverage offered by the limited lines producer is not required in order to enter into a rental agreement; and

(vi) The identity and contact information of the insurer and limited lines producer.

(c) At the time of licensure, the limited lines producer shall establish and maintain a register on a form prescribed by the commissioner of each self-storage facility that offers insurance on the limited lines producer's behalf. The register shall be maintained and updated by the limited lines producer and shall include the name, address and contact information of the self-storage facility and an officer or person who directs or controls the facility's operations. The limited lines producer shall submit such register to the Department of Insurance (department) upon reasonable request.

(d) A self-storage facility employee or authorized representative, who is not licensed as an insurance producer, may not:

(i) Evaluate or interpret the technical terms, benefits and conditions of the offered insurance coverage;

(ii) Evaluate or provide advice concerning a prospective purchaser's existing insurance coverage; or

(iii) Claim to be a licensed insurer, licensed producer, or insurance expert.

(e) The insurer issuing the self-storage insurance either directly supervises or authorizes a supervising entity to supervise the administration of

the program including development of a training program for employees and authorized representatives of the limited lines producer. The training required by this paragraph shall comply with the following:

(i) The training shall be delivered to employees and authorized representatives of the limited lines producer who are directly engaged in the activity of selling, soliciting or negotiating self-storage insurance;

(ii) The training may be provided in electronic form. However, if conducted in an electronic form, the supervising entity shall implement a supplemental education program regarding the self-storage insurance that is conducted and overseen by licensed employees of the supervising entity;

(iii) Each employee and authorized representative shall receive basic instruction about the self-storage insurance offered by the limited lines producer and the disclosures required under subsection (3)(b) of this section; and

(iv) The training shall include provisions required under any rules and regulations promulgated by the department.

(4) Notwithstanding any other provision in law, an owner is authorized to receive compensation for billing and collection services. Limited lines producers shall not be required to maintain the funds from the sale of self-storage insurance in a segregated or trust account, provided that the limited lines producer is authorized by the insurer or supervising entity to hold the funds in an alternative manner and remits such amounts to the insurer or supervising entity within sixty (60) days of receipt. All premiums for self-storage insurance received by a limited lines producer, or any employee or representative of that producer, from an occupant shall be considered funds held in a fiduciary capacity for the benefit of the insurer.

(5) Self-storage insurance may be provided under an individual policy or under a group, corporate or master policy.

(6) The limited lines producer shall be subject to the provisions of Sections 83-5-29 through 83-5-51 and Section 83-17-71.

(7) An owner is not required to be licensed under this section solely to display and make available to occupants and prospective occupants brochures and other promotional materials created by or on behalf of an authorized insurer or a surplus lines insurer.

(8) It shall be unlawful for any owner or employee of a self-storage facility, or any limited lines producer, or employee or representative of that producer, to require the purchase of insurance coverage offered by the owner or limited lines producer to enter into a rental agreement.

**HISTORY: Laws, 2019, ch. 324, § 3, eff from and after July 1, 2019.**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal statutory reference by substituting "Section 83-17-61(2)(b)" for "Section 83-1-61(2)(b)" in subsection (3)(a). The Joint Committee ratified the correction at its August 12, 2019, meeting.

## § 83-17-65. Nonresident licenses.

(1) Unless denied licensure pursuant to Section 83-17-71, a nonresident person shall receive a nonresident producer license if:

(a) The person is currently licensed as a resident and is in good standing in his or her home state;

(b) The person has submitted the proper request for licensure and has paid the fees required by Section 27-15-87;

(c) The person has submitted or transmitted to the commissioner the application for licensure that the person submitted to his or her home state, or a completed uniform application; and

(d) The person's home state awards nonresident producer licenses to residents of this state on the same basis.

(2) The commissioner may verify the producer's licensing status through the producer database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.

(3) A nonresident producer who moves from one (1) state to another state or a resident producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within thirty (30) days of the change of legal residence. No fee or license application is required.

(4) Notwithstanding any other provision of this article, a person licensed as a surplus lines producer in his or her home state shall receive a nonresident surplus lines producer license in accordance with subsection (1) of this section. Except as to subsection (1) of this section, nothing in this section otherwise amends or supersedes any provision of Sections 83-21-17 through 83-21-31.

(5) Notwithstanding any other provision of this article, a person licensed as a limited line credit insurance or other type of limited lines producer in his or her home state shall receive a nonresident limited lines producer license in accordance with subsection (1) of this section, granting the same scope of authority as granted under the license issued by the producer's home state. For the purposes of this subsection, limited line insurance is any authority granted by the home state which restricts the authority of the license to less than the total authority prescribed in the associated major lines under Section 83-17-63(1)(a) through (f).

(6) Notwithstanding any other provision of this article to the contrary, a person licensed in this state as a nonresident producer whose license is denied, suspended or revoked in his or her home state shall also have his or her nonresident license denied, suspended or revoked in this state without prior notice or hearing. The commissioner shall notify the nonresident producer, by United States regular mail sent to the nonresident producer's last-known address on file at the Insurance Department, that the nonresident producer's license has been denied, suspended or revoked. The nonresident producer may within ten (10) days of the date of the letter make written request to the department for hearing before the commissioner to determine the reasonableness of the commissioner's action. The hearing shall be held within thirty (30) days of the receipt of the written request.

**HISTORY: Laws, 2001, ch. 510, § 8; Laws, 2009, ch. 448, § 20; Laws, 2016, ch. 305, § 2, eff from and after July 1, 2016.**

**Amendment Notes** — The 2016 amendment added (6).

## § 83-17-71. Violations; penalties; judicial review; funding of agency expenses; deposit of monies into State General Fund.

(1) The commissioner may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license or may levy a civil penalty in an amount not to exceed One Thousand Dollars ($1,000.00) per violation and such penalty shall be deposited into the special fund of the State Treasury designated as the "Insurance Department Fund" for any one or more of the following causes:

(a) Providing incorrect, misleading, incomplete or materially untrue information in the license application;

(b) Violating any insurance laws, or violating any regulation, subpoena or order of the commissioner or of another state's commissioner;

(c) Obtaining or attempting to obtain a license through misrepresentation or fraud;

(d) Improperly withholding, misappropriating or converting any monies or properties received in the course of doing insurance business;

(e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(f) Having been convicted of a felony;

(g) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

(h) Using fraudulent, coercive or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

(i) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;

(j) Forging another's name to an application for insurance or to any document related to an insurance transaction;

(k) Improperly using notes or any other reference material to complete an examination for an insurance license;

(*l*) Knowingly accepting insurance business from an individual who is not licensed;

(m) Failing to comply with an administrative or court order imposing a child support obligation; or

(n) Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

(2) If the action by the commissioner is to nonrenew or to deny an application for a license, the commissioner shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the denial or nonrenewal of the applicant's or licensee's license. The applicant or

licensee may make written demand upon the commissioner within ten (10) days for a hearing before the commissioner to determine the reasonableness of the commissioner's action. The hearing shall be held within thirty (30) days.

(3) The license of a business entity may be suspended, revoked or refused if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the partnership or corporation and the violation was neither reported to the commissioner nor corrective action taken.

(4) In addition to, or in lieu of, any applicable denial, suspension or revocation of a license, a person may, after hearing, be subject to a civil fine not to exceed One Thousand Dollars ($1,000.00) per violation and such fine shall be deposited into the special fund in the State Treasury designated as the "Insurance Department Fund."

(5) The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this article and Title 83, Mississippi Code of 1972, against any person who is under investigation for or charged with a violation of this article or Title 83, Mississippi Code of 1972, even if the person's license or registration has been surrendered or has lapsed by operation of law.

(6) No licensee whose license has been revoked hereunder shall be entitled to file another application for a license as a producer within one (1) year from the effective date of such revocation or, if judicial review of such revocation is sought, within one (1) year from the date of final court order or decree affirming such revocation. Such application, when filed, may be refused by the commissioner unless the applicant shows good cause why the revocation of his license shall not be deemed a bar to the issuance of a new license.

(7) Notwithstanding any other provision of this article to the contrary, a person licensed in this state as a nonresident producer whose license is denied, suspended or revoked in his or her home state shall also have his or her nonresident license denied, suspended or revoked in this state without prior notice or hearing.

(8) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(9) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

**HISTORY: Laws, 2001, ch. 510, § 11; Laws, 2016, ch. 305, § 3; Laws, 2016, ch. 459, § 29, eff from and after July 1, 2016.**

**Joint Legislative Committee Note —** Section 3 of ch. 305 Laws of 2016, effective from and after July 1, 2016 (approved April 4, 2016), amended this section. Section 29 of ch. 459, Laws of 2016, effective from and after July 1, 2016 (approved May 6, 2016), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amend-

ments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 5, 2016, meeting of the Committee.

**Editor's Notes —** Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

**Amendment Notes —** The first 2016 amendment (ch. 305) added (7); and made minor punctuation changes.

The second 2016 amendment (ch. 459) added (7) and (8).

**Cross References —** Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

## § 83-17-73. Licensing required before individual may accept commission for selling; employees or authorized agents of limited license rental car company may receive commission under rental car company's limited license.

(1) An insurance company or insurance producer shall not pay a commission, service fee, brokerage or other valuable consideration to a person for selling, soliciting or negotiating insurance in this state if that person is required to be licensed under this article and is not so licensed.

(2) A person shall not accept a commission, service fee, brokerage or other valuable consideration for selling, soliciting or negotiating insurance in this state if that person is required to be licensed under this article and is not so licensed.

(3) Renewal or other deferred commissions may be paid to a person for selling, soliciting or negotiating insurance in this state if the person was required to be licensed under this article at the time of the sale, solicitation or negotiation and was so licensed at that time.

(4) An insurer or insurance producer may pay or assign commissions, service fees, brokerages or other valuable consideration to an insurance agency or to persons who do not sell, solicit or negotiate insurance in this state, unless the payment would violate Section 83-17-7 or any other applicable provision of Title 83, Mississippi Code of 1972.

(5) Notwithstanding any provision in this section to the contrary, employees and authorized agents of a limited license rental car company:

(a) May receive compensation for activities under the rental car company's limited license that is incidental to their overall compensation, including, but not limited to, commissions, bonuses and other valuable consideration;

(b) May offer, sell or solicit, in connection with and incidental to the rental of rental cars, the kinds of insurance specified in Section 83-17-63(1)(h) under the limited license of the rental car company; and

(c) Shall not require any additional licensing under this chapter or any other provision of Title 83 relating to paragraph (a) or (b) above.

**HISTORY: Laws, 2001, ch. 510, § 12; Laws, 2015, ch. 364, § 4, eff from and after July 1, 2015.**

**Amendment Notes** — The 2015 amendment added (5).

## § 83-17-75. Appointment of producer as agent of insurer.

### JUDICIAL DECISIONS

**1. Suspension of license.**

When a contractor sued insurers and their agent for negligently issuing a bid bond without authority, due to expiration of the agent's certificate for failure to pay a renewal fee, summary judgment erred because the agent was unauthorized to issue the bond, which had to be valid on the date issued but was null and void, and a later payment of the fee and reinstatement of the agent did not retroactively validate the bond, so fact questions existed as to the negligent issuance of the bond contrary to a duty to the contractor. King Metal Bldgs., Inc. v. Renasant Ins., Inc., 159 So. 3d 567, 2014 Miss. App. LEXIS 377 (Miss. Ct. App. 2014), cert. denied, 158 So. 3d 1153, 2015 Miss. LEXIS 142 (Miss. 2015).

# ARTICLE 9.

# LICENSING OF INSURANCE ADJUSTERS.

Sec.



## § 83-17-401. Definitions.

As used in this article, unless the context otherwise requires:

(a) "Adjuster" means any person who, as an independent contractor, or as an employee of an independent contractor, adjustment bureau, association, insurance company or corporation, managing general agent or self-insured, investigates or adjusts losses on behalf of either an insurer or a self-insured, or any person who supervises the handling of claims. "Adjuster" shall not include:

(i) An attorney-at-law who adjusts insurance losses from time to time and incidental to the practice of law, and who does not advertise or represent that he is an adjuster;

(ii) A salaried employee of an insurer who is regularly engaged in the adjustment, investigation or supervision of insurance claims;

(iii) Persons employed only for the purpose of furnishing technical assistance to a licensed adjuster, including, but not limited to, photographers, estimators, private detectives, engineers, handwriting experts and attorneys-at-law;

(iv) A licensed agent or general agent of an authorized insurer who processes undisputed or uncontested losses, or both, for such insurer under policies issued by the licensed agent or general agent;

(v) A person who performs clerical duties with no negotiations with the parties on disputed or contested claims, or both;

(vi) Any person who handles claims arising under life, accident and health insurance policies;

(vii) Any person who is a multiperil crop insurance adjuster; or

(viii) Any person who collects claim information from, or furnishes claim information to, insureds or claimants, and who performs data entry including entering data into an automated claims adjudication system, if the person is an employee of a licensed independent adjuster or its affiliate where no more than twenty-five (25) such persons are under the supervision of one (1) licensed independent adjuster or licensed agent. A licensed agent who is acting as a supervisor and adjusting portable electronics insurance claims in accordance with this subparagraph does not need to be licensed as an adjuster.

(b) "Insurer" means any insurance company or self-insured.

(c) "Commissioner" means the Commissioner of Insurance.

(d) "Automated claims adjudication system" means a preprogrammed computer system designed for the collection, data entry, calculation and final resolution of portable electronics insurance claims which:

(i) May only be utilized by a licensed independent adjuster, licensed agent or supervised persons operating in accordance with paragraph (a)(viii) of this section; and

(ii) Must comply with all claims payment requirements of the insurance code; and must be certified as compliant with this section by a licensed independent adjuster that is an officer of a licensed business entity under this chapter.

(e) "Workers' compensation adjuster" means an adjuster whose scope of licensure is limited to workers' compensation insurance. A workers' compensation adjuster may not represent an insured individual. A workers' compensation adjuster must comply with all licensing and continuing education requirements as are prescribed by the commissioner pursuant to this article.

**HISTORY: Laws, 1993, ch. 433, § 1; Laws, 2011, ch. 474, § 1; Laws, 2012, ch. 313, § 1; Laws, 2016, ch. 468, § 2, eff from and after July 1, 2016.**

**Amendment Notes —** The 2012 amendment added (a)(viii); added (d); and made minor stylistic changes.

The 2016 amendment added (e).

## § 83-17-407. Waiver of license requirement for certain adjuster license applicants; prohibition against denial of reciprocity for applicant licensed in another state solely because applicant is not resident of the United States.

The commissioner may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state, or an applicant with a certification from a person or entity approved by the commissioner that provides adjuster education and training and has met the standards as set forth by the commissioner regarding pre-licensing coursework and examination. No applicant with a valid license from another state shall be rejected solely on the basis that the individual is not a resident of the United States of America.

**HISTORY: Laws, 1993, ch. 433, § 4; Laws, 2012, ch. 313, § 2; Laws, 2017, ch. 317, § 1, eff from and after July 1, 2017.**

**Amendment Notes** — The 2012 amendment added the last sentence.

The 2017 amendment added "or an applicant...regarding pre-licensing coursework and examination" at the end of the first sentence.

## § 83-17-415. Continuing education requirement; certification of programs.

The commissioner shall adopt a procedure for certifying continuing education programs. Each individual seeking renewal of an adjuster license, which has been in effect for a term of eighteen (18) months or less shall satisfactorily complete twelve (12) hours of study in approved continuing education courses. Every individual seeking renewal of an adjuster license, which has been in effect for a term of more than eighteen (18) months shall satisfactorily complete twenty-four (24) hours of study in approved continuing education courses, of which three (3) hours shall have a course concentration in ethics.

**HISTORY: Laws, 1993, ch. 433, § 8; Laws, 2016, ch. 468, § 3, eff from and after July 1, 2016.**

**Amendment Notes** — The 2016 amendment deleted the former last sentence, which read: "Each adjuster, in order to renew a license issued under this article, shall participate in a continuing education program(s) for at least twelve (12) hours each license year"; and added the present last two sentences.

## § 83-17-417. Examination requirement; exceptions; subject matter; manual.

(1) Each applicant for a license as an adjuster, before the issuance of such license, shall personally take and pass, to the satisfaction of the commissioner, an examination as a test of his qualifications and competency; but the requirement of an examination shall not apply to any of the following:

(a) An applicant who for the one-year period next preceding July 1, 1993, has been principally engaged in the investigation, adjustment or supervision of losses and who is so engaged on July 1, 1993;

(b) An applicant for the renewal of a license issued hereunder;

(c) An applicant who is licensed as an insurance adjuster, as defined by this article, in another state with which state a reciprocal agreement has been entered into by the commissioner;

(d) Any person who possesses a certification from a person or entity approved by the commissioner that provides adjuster education and training and that requires, as a prerequisite to certification, an examination substantially equivalent to those of this state and approved by the commissioner; or

(e) Any person who has completed a course or training program in adjusting of losses as prescribed and approved by the commissioner and is certified to the commissioner upon completion of the course that such person has completed the course or training program, and has passed an examination testing his knowledge and qualification, as prescribed by the commissioner.

(2) Each examination for a license as an adjuster shall be as the commissioner may prescribe and shall be of sufficient scope reasonably to test the applicant's knowledge relative to the kinds of insurance which may be dealt with under the license applied for and the duties, responsibilities and laws of this state applicable to such a licensee.

(3) The commissioner shall prepare and make available to applicants a manual or instructions specifying in general terms the subjects which may be covered in any examination for such a license.

**HISTORY: Laws, 1993, ch. 433, § 9; Laws, 2017, ch. 317, § 2, eff from and after July 1, 2017.**

**Amendment Notes —** The 2017 amendment, in (1), added (d) and made a related change, and redesignated former (d) as (e).

## § 83-17-419. License period; renewal.

(1) The privilege license of an individual to act as an adjuster shall continue from the date of issuance for original licenses or from the expiration date for existing licenses until the last day of the month of the licensee's birthday in the second year following issuance or renewal of the license, with a minimum term of thirteen (13) months. The privilege license of a business entity to act as an adjuster shall continue from the date of issuance until May 31, in the second year following issuance or renewal of the license, with a minimum term of thirteen (13) months.

(2) Each adjuster shall file an application for renewal of license on the form and in the manner prescribed by the commissioner for such purpose. Upon the filing of such application for renewal of license and the payment of the required fees, the current license shall continue to be in force until the renewal license is issued by the commissioner or until the commissioner has

refused for cause to issue such renewal license, as provided in this article, and has given notice of such refusal in writing to the adjuster.

**HISTORY: Laws, 1993, ch. 433, § 10; Laws, 1996, ch. 305, § 1; Laws, 2016, ch. 468, § 4, eff from and after July 1, 2016.**

**Amendment Notes —** The 2016 amendment rewrote (1), which read: "Each license issued to an adjuster shall expire on May 31 following the date of issue, unless prior thereto it is revoked or suspended by the commissioner."

## ARTICLE 11.

## LICENSING OF PUBLIC ADJUSTERS.

Sec.



### § 83-17-513. Continuing education requirement; certification of programs.

The commissioner shall adopt a procedure for certifying continuing education programs for public adjusters. Every individual seeking renewal of a public adjuster license, which has been in effect for a term of eighteen (18) months or less shall satisfactorily complete twelve (12) hours of study in approved continuing education courses. Every individual seeking renewal of a public adjuster license, which has been in effect for a term of more than eighteen (18) months shall satisfactorily complete twenty-four (24) hours of study in approved continuing education courses of which three (3) hours shall have a course concentration in ethics.

**HISTORY: Laws, 2007, ch. 497, § 7; Laws, 2016, ch. 468, § 5, eff from and after July 1, 2016.**

**Amendment Notes —** The 2016 amendment deleted the former last sentence, which read: "Each public adjuster, in order to renew a license issued under this article, shall participate in a continuing education program(s) for at least twelve (12) hours each license year"; and added the present last two sentences.

### § 83-17-517. Expiration of license; renewal.

(1) The privilege license of an individual to act as a public adjuster shall continue from the date of issuance for original licenses or from the expiration date for existing licenses until the last day of the month of the licensee's birthday in the second year following issuance or renewal of the license, with a minimum term of thirteen (13) months. The privilege license of a business entity to act as a public adjuster shall continue from the date of issuance until

May 31 in the second year following issuance or renewal of the license, with a minimum term of thirteen (13) months.

(2) Each public adjuster shall file an application for renewal of license on the form and in the manner prescribed by the commissioner for such purpose. Upon the filing of such application for renewal of license and the payment of the required fees, prior to the expiration date, the current license shall continue to be in force until the renewal license is issued by the commissioner or until the commissioner has refused for cause to issue such renewal license, as provided in this article, and has given notice of such refusal in writing to the public adjuster.

**HISTORY: Laws, 2007, ch. 497, § 9; Laws, 2016, ch. 468, § 6, eff from and after July 1, 2016.**

**Amendment Notes** — The 2016 amendment rewrote (1), which read: "Each license issued to a public adjuster shall expire on May 31 following the date of issue, unless prior thereto it is revoked or suspended by the commissioner."

## § 83-17-519. Grounds for suspension or revocation of license or refusal to renew; notice; hearing; filing new application after revocation of license; funding of agency expenses; deposit of monies into State General Fund.

(1) A license may be refused, or a license duly issued may be suspended or revoked or the renewal thereof refused by the commissioner, or the commissioner may levy a civil penalty in an amount not to exceed Five Thousand Dollars ($5,000.00) per violation, or both, and any such penalty shall be deposited into the special fund of the State Treasury designated as the "Insurance Department Fund," if, after notice and hearing as hereinafter provided, he finds that the applicant for, or holder of, such license:

(a) Has intentionally made a material misstatement in the application for such license; or

(b) Has obtained, or attempted to obtain, such license by fraud or misrepresentation; or

(c) Has misappropriated or converted to his own use or illegally withheld money belonging to another person or entity; or

(d) Has otherwise demonstrated lack of trustworthiness or competence to act as a public adjuster; or

(e) Has been guilty of fraudulent or dishonest practices or has been convicted of a felony; or

(f) Has materially misrepresented the terms and conditions of insurance policies or contracts or failed to identify himself as a public adjuster; or

(g) Has obtained or attempted to obtain such license for a purpose other than holding himself out to the general public as a public adjuster; or

(h) Has violated any insurance laws, or any regulation, subpoena or order of the commissioner or of another state's commissioner of insurance.

(2) Before any license shall be refused (except for failure to pass a required written examination) or suspended or revoked or the renewal thereof

refused hereunder, the commissioner shall give notice of his intention so to do, by certified mail, return receipt requested, to the applicant for or holder of such license, and shall set a date not less than twenty (20) days from the date of mailing such notice when the applicant or licensee may appear to be heard and produce evidence in opposition to such refusal, suspension or revocation. Such notice shall constitute automatic suspension of license if the person involved is a licensed public adjuster. In the conduct of such hearing, the commissioner or any regular salaried employee of the department specially designated by him for such purpose shall have the power to administer oaths, to require the appearance of and examine any person under oath, and to require the production of books, records or papers relevant to the inquiry upon his own initiative or upon the request of the applicant or licensee. Upon the termination of such hearing, findings shall be reduced to writing and, upon approval by the commissioner, shall be filed in his office; and notice of the findings shall be sent by certified mail, return receipt requested, to the applicant or licensee.

(3) Where the grounds set out in subsection (1)(c) or (1)(f) of this section are the grounds for any hearing, the commissioner may, in his discretion in lieu of the hearing provided for in subsection (2) of this section, file a petition requesting the court to suspend or revoke any license authorized hereunder in a court of competent jurisdiction of the county or district in which the alleged offense occurred. In such cases, subpoenas may be issued for witnesses, and mileage and witness fees paid as in other cases. All costs of such cause shall be paid by the defendant, if the finding of the court be against him.

(4) No licensee whose license has been revoked hereunder shall be entitled to file another application for a license as a public adjuster within one (1) year from the effective date of such revocation or, if judicial review of such revocation is sought, within one (1) year from the date of final court order or decree affirming such revocation. An application filed after such one-year period shall be refused by the commissioner unless the applicant shows good cause why the revocation of his license shall not be deemed a bar to the issuance of a new license.

(5) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(6) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

**HISTORY: Laws, 2007, ch. 497, § 10; Laws, 2016, ch. 459, § 30, eff from and after July 1, 2016.**

**Editor's Notes —** Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016' "

**Amendment Notes —** The 2016 amendment added (5) and (6).

**Cross References —** Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

# CHAPTER 19.

# DOMESTIC COMPANIES



## GENERAL PROVISIONS



### § 83-19-1. Classifications of insurance companies.

**RESEARCH REFERENCES**

**ALR.** Constitutes "Contamination" Within Property Damage Insurance: What Policy Clause Excluding Coverage.

### § 83-19-21. License fees; deposit into Insurance Department Fund; funding of agency expenses; deposit of monies into State General Fund.

If it appears that the requirements of the law herein have been complied with, the commissioner shall collect a fee of Two Hundred Dollars ($200.00), to be paid into the special fund in the State Treasury designated as the "Insurance Department Fund" and shall certify the fact and his approval of the articles of association, by endorsement thereon. The commissioner shall also collect a fee of Fifty Dollars ($50.00) for any amendment filed thereon and such fee shall be deposited into the "Insurance Department Fund."

From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

**HISTORY: Codes, 1906, § 2580; Hemingway's 1917, § 5044; 1930, § 5148; 1942, § 5658; Laws, 1977, ch. 325; Laws, 1988, ch. 526, § 6; Laws, 1991, ch. 352 § 1; Laws, 2016, ch. 459, § 31, eff from and after July 1, 2016.**

**Editor's Notes —** Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

**Amendment Notes —** The 2016 amendment added the last two paragraphs.

**Cross References —** Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

## § 83-19-31. Capital required for various classes of companies.

(1) No corporation so formed shall transact any other business than that specified in its charter and articles of association. Companies so formed must meet the following capital and surplus requirements:

(a) Single-line companies so formed to write a classification listed in paragraphs (a) through (n) in Section 27-15-83, the minimum capital requirement shall be Four Hundred Thousand Dollars ($400,000.00) and the surplus shall be a minimum of Six Hundred Thousand Dollars ($600,000.00).

(b) Multi-line companies so formed to write a combination of the classifications listed in paragraphs (a) through (n) in Section 27-15-83, the minimum capital requirement shall be Six Hundred Thousand Dollars ($600,000.00) and the surplus shall be a minimum of Nine Hundred Thousand Dollars ($900,000.00).

(c) Companies so formed for the purpose of transacting the business of life insurance on the industrial plan may organize with a minimum capital of One Hundred Thousand Dollars ($100,000.00) and a minimum surplus of Fifty Thousand Dollars ($50,000.00).

An industrial life insurer shall be limited to the following:

(i) A life insurance policy, in the aggregate value of Ten Thousand Dollars ($10,000.00) in death benefits, exclusive of multiple indemnity benefits.

(ii) A disability policy in the aggregate benefits of Sixty Dollars ($60.00) per week.

(iii) A policy providing benefits for dismembered and broken limbs and/or loss of eyesight in the aggregate of Five Thousand Dollars ($5,000.00) per policy year.

(iv) A policy which provides benefits for the payment for or furnishing of hospitalization, drugs, attending physicians and surgical costs in the aggregate of Three Thousand Five Hundred Dollars ($3,500.00) per policy year.

(d) All mutual and reciprocal companies shall possess at the time of initial license and maintain thereafter a surplus, after deductions for services, in an amount equal to the capital and surplus requirements of a stock company writing similar lines of insurance.

(e) If at any time the surplus of such domestic company or association shall be less than the minimum surplus noted above, such company or association shall be considered impaired; and it shall be the duty of the officers of such company or association to report any such impairment of surplus to the State Commissioner of Insurance in writing within ten (10) days after such impairment occurs. When any such impairment is reported,

or if the Commissioner of Insurance should determine that the company is operating in an impaired condition, the commissioner may suspend the certificate of authority and license of such domestic insurance company or association to do business in this state until such company shall raise or increase its surplus to the minimum amount required herein.

(2) Any domestic company qualifying under the foregoing sections shall deposit with the State Treasurer fifty percent (50%) of its capital stock, either in cash or in such bonds or securities in which such company is authorized by law to invest its funds. Upon such deposit and evidence, by affidavit or otherwise, satisfactory to the Insurance Commissioner that the capital and surplus is all paid in and that the company is the actual and unqualified owner of the securities representing the paid-up capital and surplus, he shall issue to such company his certificate authorizing it to transact business in this state.

The provisions of this section as to the minimum requirements as to paid-up capital stock and cash surplus shall not become effective until January 1, 1988, concerning any domestic company which was authorized to do business and was writing business in this state on July 1, 1985.

Notwithstanding any other provision of law, the securities qualified for deposit under this section may be deposited with a clearing corporation or held in the Federal Reserve book-entry system. Securities deposited with a clearing corporation or held in the Federal Reserve book-entry system and used to meet the deposit requirements set forth in this section shall be under the control of the Insurance Commissioner and shall not be withdrawn by the insurance company without the approval of the Insurance Commissioner. Any insurance company holding securities in such manner shall provide to the Insurance Commissioner evidence issued by its custodian or member bank through which such insurance company has deposited such securities in a clearing corporation or through which such securities are held in the Federal Reserve book-entry system, respectively, in order to establish that the securities are actually recorded in an account in the name of the custodian or other direct participant or member bank, and that the records of the custodian, other participant or member bank reflect that such securities are held subject to the order of the Insurance Commissioner.

(3) No insurance company, including any mutual insurance company, organized under the laws of this state and transacting business in this state shall expose itself to loss on any one (1) risk or hazard to an amount exceeding ten percent (10%) of its paid-up capital and surplus unless the excess is reinsured in some other company duly authorized to transact similar business in this state or as otherwise provided in the insurance code. For purposes of this subsection, the terms "risk" and "hazard" apply to the subject matter of any one (1) insurance policy and not to any one (1) peril.

(4) The Commissioner of Insurance may require additional capital and surplus based on the type, nature or volume of business transacted.

**HISTORY: Codes, 1892, § 2334; 1906, § 2582; Hemingway's 1917, § 5046; 1930, § 5150; 1942, § 5660; Laws, 1956, ch. 336, § 1; Laws, 1958, ch. 449; Laws, 1960, ch. 368; Laws, 1962, ch. 455, § 1; Laws, 1972, ch. 445, § 1, 1976, ch. 402, § 1; Laws,**

**1982, chs. 404, § 1; 500, § 1; Laws, 1985, ch. 401; Laws, 1989, ch. 442, § 1; Laws, 1992, ch. 425, § 1; Laws, 1998, ch. 323, § 4; Laws, 1999, ch. 475, § 2; Laws, 2001, ch. 412, § 5; Laws, 2015, ch. 316, § 1, eff from and after July 1, 2015.**

**Amendment Notes —** The 2015 amendment redesignated former (1)(c)1 through (c)4, as present (1)(c)(i) through (c)(iv); and substituted "Ten Thousand Dollars ($10,000.00)" for "Five Thousand Dollars ($5,000.00)" in (1)(c)(i).

## REGULATION OF REINSURANCE

Sec.



### § 83-19-151. Credit for reinsurance; accredited reinsurer defined.

Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of paragraph (a), (b), (c), (d), (e), (f) or (g) of this section; provided further that the commissioner may adopt by regulation pursuant to Section 83-19-157 specific additional requirements relating to or setting forth the valuation of assets or reserve credits, the amount and forms of security supporting reinsurance arrangements described in Section 83-19-157, and/or the circumstances pursuant to which credit will be reduced or eliminated. Credit shall be allowed under paragraph (a), (b) or (c) of this section only as respects cessions of those kinds or classes of business which the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under paragraph (c) or (d) of this section only if the applicable requirements of paragraph (h) have been satisfied.

(a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is licensed to transact insurance or reinsurance in this state.

(b) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this state. In order to be eligible for accreditation, a reinsurer must:

(i) Files with the commissioner evidence of its submission to this state's jurisdiction;

(ii) Submits to this state's authority to examine its books and records;

(iii) Be licensed to transact insurance or reinsurance in at least one (1) state, or in the case of a United States branch of an alien assuming insurer, be entered through and licensed to transact insurance or reinsurance in at least one (1) state;

(iv) Files annually with the commissioner a copy of its annual statement filed with the Insurance Department of its state of domicile and a copy of its most recent audited financial statement; and

(v) Demonstrate to the satisfaction of the commissioner that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer is deemed to meet this requirement as of the time of its application if it maintains a surplus as regards policyholders in an amount not less than Twenty Million Dollars ($20,000,000.00) and its accreditation has not been denied by the commissioner within ninety (90) days after submission of its application.

(c)(i) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is domiciled and licensed in, or in the case of a United States branch of an alien assuming insurer is entered through, a state which employs standards regarding credit for reinsurance substantially similar to those applicable under this statute and the assuming insurer or United States branch of an alien assuming insurer:

1. Maintains a surplus as regards policyholders in an amount not less than Twenty Million Dollars ($20,000,000.00); and

2. Submits to the authority of this state to examine its books and records.

(ii) The requirement of item 1 of this paragraph (c)(i) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(d)(i) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution, as defined in paragraph (b) of Section 83-19-155, for the payment of the valid claims of its United States ceding insurers, their assigns and successors in interest. To enable the commissioner to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the National Association of Insurance Commissioners annual statement form by licensed insurers. The assuming insurer shall submit to examination of its books and records by the commissioner and bear the expense of examination.

(ii)1. Credit for reinsurance shall not be granted under this paragraph (d) unless the form of the trust and any amendments to the trust have been approved by:

a. The commissioner of the state where the trust is domiciled; or

b. The commissioner of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

2. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that contested claims shall be valid and enforceable upon the

final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in its trustees for the benefit of the assuming insurer's United States ceding insurers, their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the commissioner.

3. The trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year the trustee of the trust shall report to the commissioner in writing the balance of the trust and listing the trust's investments at the preceding year-end and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the following December 31.

(iii) The following requirements apply to the following categories of assuming insurer:

1. The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers, and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than Twenty Million Dollars ($20,000,000.00) except as provided in item 2 of this paragraph (d)(iii).

2. At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three (3) full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trusteed surplus may not be reduced to an amount less than thirty percent (30%) of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

3.a. In the case of a group including incorporated and individual unincorporated underwriters:

A. For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after January 1, 1993, the trust shall consist of a trusteed account in an amount not less than the respective underwriters' several liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group;

B. For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended

or renewed after that date, notwithstanding the other provisions of Sections 83-19-151 through 83-19-157, the trust shall consist of a trusteed account in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and

C. In addition to these trusts, the group shall maintain in trust a trusteed surplus of which One Hundred Million Dollars ($100,000,000.00) shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account; and

b. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members.

c. Within ninety (90) days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the commissioner an annual certification by the group's domiciliary regulator of the solvency of each underwriter member; or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the group.

(iv) In the case of a group of incorporated underwriters under common administration, the group shall:

1. Have continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation;

2. Maintain aggregate policyholders' surplus of at least Ten Billion Dollars ($10,000,000,000.00);

3. Maintain a trust fund in an amount not less than the group's several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of the group;

4. In addition, maintain a joint trusteed surplus of which One Hundred Million Dollars ($100,000,000.00) shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group as additional security for these liabilities; and

5. Within ninety (90) days after its financial statements are due to be filed with the group's domiciliary regulator, make available to the commissioner an annual certification of each underwriter member's solvency by the member's domiciliary regulator and financial statements of each underwriter member of the group prepared by its independent public accountant.

(e) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that has been certified by the commissioner as a reinsurer in this state and secures its obligations in accordance with the requirements of this paragraph (e).

(i) In order to be eligible for certification, the assuming insurer shall meet the following requirements:

1. The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to subparagraph (iii) of this paragraph (e);

2. The assuming insurer must maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the commissioner pursuant to regulation;

3. The assuming insurer must maintain financial strength ratings from two (2) or more rating agencies deemed acceptable by the commissioner pursuant to regulation;

4. The assuming insurer must agree to submit to the jurisdiction of this state, appoint the commissioner as its agent for service of process in this state, and agree to provide security for one hundred percent (100%) of the assuming insurer's liabilities attributable reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment;

5. The assuming insurer must agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis; and

6. The assuming insurer must satisfy any other requirements for certification deemed relevant by the commissioner.

(ii) An association including incorporated and individual unincorporated underwriters may be a certified reinsurer. In order to be eligible for certification, in addition to satisfying requirements of subparagraph (i) of this paragraph (e):

1. The association shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents (net of liabilities) of the association and its members, which shall include a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members, in an amount determined by the commissioner to provide adequate protection;

2. The incorporated members of the association shall not be engaged in any business other than underwriting as a member of the association and shall be subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members; and

3. Within ninety (90) days after its financial statements are due to be filed with the association's domiciliary regulator, the association shall provide to the commissioner an annual certification by the association's domiciliary regulator of the solvency of each underwriter member; or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the association.

(iii) The commissioner shall create and publish a list of qualified jurisdictions, under which an assuming insurer licensed and domiciled in such jurisdiction is eligible to be considered for certification by the commissioner as a certified reinsurer.

1. In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. A qualified jurisdiction must agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction if the commissioner has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards. Additional factors may be considered in the discretion of the commissioner.

2. A list of qualified jurisdictions shall be published through the NAIC Committee Process. The commissioner shall consider this list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification in accordance with criteria to be developed under regulations.

3. United States jurisdictions that meet the requirement for accreditation under the NAIC Financial Regulation Standards and Accreditation Program shall be recognized as qualified jurisdictions.

4. If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner has the discretion to suspend the reinsurer's certification indefinitely, in lieu of revocation.

(iv) The commissioner shall assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies deemed acceptable to the commissioner pursuant to regulation. The commissioner shall publish a list of all certified reinsurers and their ratings.

(v) A certified reinsurer shall secure obligations assumed from United States ceding insurers under this paragraph (e) at a level consistent with its rating, as specified in regulations promulgated by the commissioner.

1. In order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the commissioner and consistent with the provisions of Section 83-19-153 or in a multibeneficiary trust in accordance with paragraph (d) of this section, except as otherwise provided in this paragraph (e).

2. If a certified reinsurer maintains a trust to fully secure its obligations subject to paragraph (d) of this section, and chooses to secure

its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this paragraph (e) or comparable laws of other United States jurisdictions and for its obligations subject to paragraph (d) of this section. It shall be a condition to the grant of certification under this paragraph (e) that the certified reinsurer shall have bound itself, by the language of the trust and agreement with the commissioner with principal regulatory oversight of each such trust account, to fund, upon termination of any such trust account, out of the remaining surplus of such trust any deficiency of any other such trust account.

3. The minimum trusteed surplus requirements provided in paragraph (d) of this section are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this paragraph (e), except that such trust shall maintain a minimum trusteed surplus of Ten Million Dollars ($10,000,000.00).

4. With respect to obligations incurred by a certified reinsurer under this paragraph, if the security is insufficient, the commissioner shall reduce the allowable credit by an amount proportionate to the deficiency, and has the discretion to impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

5. For purposes of this paragraph, a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure one hundred percent (100%) of its obligations.

6. As used in this paragraph (e), the term "terminated" refers to revocation, suspension, voluntary surrender and inactive status.

7. If the commissioner continues to assign a higher rating as permitted by other provisions of this section, this requirement does not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

(vi) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification, and has the discretion to defer to the rating assigned by that jurisdiction, and such assuming insurer shall be considered to be a certified reinsurer in this state.

(vii) A certified reinsurer that ceases to assume new business in this state may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this paragraph (e), and the commissioner shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

(f)(i) Credit shall be allowed when the reinsurance is ceded to an assuming insurer meeting each of the conditions set forth below.

1. The assuming insurer must have its head office or be domiciled in, as applicable, and be licensed in a Reciprocal Jurisdiction. A "Reciprocal Jurisdiction" is a jurisdiction that meets one (1) of the following:

a. A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and European Union, is a member state of the European Union. For purposes of this paragraph (f), a "covered agreement" is an agreement entered into pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. Sections 313 and 314, that is currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance;

b. A U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program; or

c. A qualified jurisdiction, as determined by the commissioner pursuant to paragraph (e)(iii) of this section which is not otherwise described in item 1.a or 1.b above and which meets certain additional requirements, consistent with the terms and conditions of in-force covered agreements, as specified by the commissioner in regulation.

2. The assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated according to the methodology of its domiciliary jurisdiction, in an amount to be determined by the commissioner pursuant to regulation. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it must have and maintain on an ongoing basis minimum capital and surplus equivalents (net of liabilities), calculated according to the methodology applicable in its domiciliary jurisdiction, and a central fund containing a balance in amounts to be determined by the commissioner pursuant to regulation.

3. The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, to be determined by the commissioner pursuant to regulation. If the assuming reinsurer is an association, including incorporated and individual unincorporated underwriters, it must have and maintain on an ongoing basis a minimum solvency or capital ratio in the Reciprocal Jurisdiction where the assuming reinsurer has its head office or is domiciled, as applicable, and is also licensed.

4. The assuming insurer must agree and provide adequate assurance to the commissioner, in a form specified by the commissioner pursuant to regulation, as follows:

a. The assuming insurer must provide prompt written notice and explanation to the commissioner if it falls below the minimum requirements set forth in items 2 and 3 of this subparagraph (i), or if any regulatory action is taken against it for serious noncompliance with applicable law;

b. The assuming insurer must consent in writing to the jurisdiction of the courts of this state and to the appointment of the commissioner as agent for service of process. The commissioner may also require that such consent be provided and included in each reinsurance agreement under the commissioner's jurisdiction. Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws;

c. The assuming insurer must consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer or its legal successor, that have been declared enforceable in the jurisdiction where the judgment was obtained;

d. Each reinsurance agreement must include a provision requiring the assuming reinsurer to provide security in an amount equal to one hundred percent (100%) of the assuming reinsurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming reinsurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its resolution estate; and

e. The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement which involves this state's ceding insurers, and agrees to notify the ceding insurer and the commissioner and to provide security in an amount equal to one hundred percent (100%) of the assuming insurer's liabilities to the ceding insurer, should the assuming insurer enter into such a solvent scheme of arrangement. Such security shall be in a form consistent with the provisions of paragraph (e) of this section and Section 83-19-153 and as specified by the commissioner's regulation.

5. The assuming insurer or its legal successor must provide, if requested by the commissioner, on behalf of itself and any legal predecessors, certain documentation to the commissioner as specified by the commissioner in regulation.

6. The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements, pursuant to criteria set forth in regulation.

7. The assuming insurer's supervisory authority must confirm to the commissioner on an annual basis, as of the preceding December 31 or at the annual date otherwise statutorily reported to the Reciprocal

Jurisdiction, that the assuming reinsurer complies with the requirements set forth in items 2 and 3.

8. Nothing in this provision precludes an assuming insurer from providing the commissioner with information on a voluntary basis.

(ii) The commissioner shall timely create and publish a list of Reciprocal Jurisdictions.

1. A list of Reciprocal Jurisdictions is published through the NAIC Committee Process. The commissioner's list shall include any Reciprocal Jurisdiction as defined under subparagraph (i)1.a and b of this paragraph (f) and shall consider any other Reciprocal Jurisdiction included on the NAIC list. The commissioner may approve a jurisdiction that does not appear on the NAIC list of Reciprocal Jurisdictions in accordance with criteria to be developed under regulations issued by the commissioner.

2. The commissioner may remove a jurisdiction from the list of Reciprocal Jurisdictions upon a determination that the jurisdiction no longer meets the requirements of a Reciprocal Jurisdiction in accordance with a process set forth in regulations issued by the commissioner, except that the commissioner shall not remove from the list a Reciprocal Jurisdiction as defined under subparagraph (i)1.a and b of this paragraph (f). Upon removal of a Reciprocal Jurisdiction from this list credit for reinsurance ceded to an assuming insurer which has its home office or is domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to this section.

(iii) The commissioner shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in this paragraph (f) and to which cessions shall be granted credit in accordance with this paragraph (f). The commissioner may add an assuming insurer to such list if an NAIC accredited jurisdiction has added such assuming insurer to a list of such assuming insurers or if, upon initial eligibility, the assuming insurer submits the information to the commissioner as required under subparagraph (i)4 of this paragraph (f) and complies with any additional requirements that the commissioner may impose by regulation, except to the extent that they conflict with an applicable covered agreement.

(iv) If the commissioner determines that an assuming insurer no longer meets one or more of the requirements under this paragraph (f), the commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this paragraph (f) in accordance with procedures set forth in regulation.

1. While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with Section 83-19-153.

2. If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation

with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the commissioner and consistent with the provisions of Section 83-19-153.

(v) If subject to a legal process of rehabilitation, liquidation or conservation, as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding ceded liabilities.

(vi) Nothing in this paragraph (f) shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in that reinsurance agreement, except as expressly prohibited by this section or other applicable law or regulation.

(vii) Credit may be taken under this paragraph (f) only for reinsurance agreements entered into, amended, or renewed on or after July 1, 2020, and only with respect to losses incurred and reserves reported on or after the later of (i) the date on which the assuming insurer has met all eligibility requirements pursuant to subparagraph (i) of this paragraph (f), or (ii) the effective date of the new reinsurance agreement, amendment or renewal.

1. This subparagraph (vii) does not alter or impair a ceding insurer's right to take credit for reinsurance to the extent that credit is not available under this paragraph (f), as long as the reinsurance qualifies for credit under any other applicable provision of this section.

2. Nothing in this paragraph (f) shall authorize an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement except as permitted by the terms of the agreement.

3. Nothing in this paragraph (f) shall limit, or in any way alter, the capacity of parties to any reinsurance agreement to renegotiate the agreement.

(g) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of paragraph (a), (b), (c), (d), (e) or (f) of this section, but only as to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

(h) If the assuming insurer is not licensed, accredited or certified to transact insurance or reinsurance in this state, the credit permitted by paragraphs (c) and (d) of this section shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(i)1. That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or of any appellate court in the event of an appeal; and

2. To designate the commissioner or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the ceding insurer.

(ii) This paragraph (h) is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.

(i) If the assuming insurer does not meet the requirements of paragraph (a), (b), (c) or (f) of this section the credit permitted by paragraph (d) or (e) of this subsection shall not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

(i) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by paragraph (d)(iii) of this section, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight all of the assets of the trust fund.

(ii) The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies.

(iii) If the commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the assets or part thereof shall be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement.

(iv) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

(j) If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the commissioner may suspend or revoke the reinsurer's accreditation or certification.

(i) The commissioner must give the reinsurer notice and opportunity for hearing. The suspension or revocation may not take effect until after the commissioner's order on hearing, unless:

1. The reinsurer waives its right to hearing;

2. The commissioner's order is based on regulatory action by the reinsurer's domiciliary jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state of the reinsurer under paragraph (e)(vi) of this section; or

3. The commissioner finds that an emergency requires immediate action and a court of competent jurisdiction has not stayed the commissioner's action.

(ii) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with Section 83-19-153. If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with paragraph (e)(v) of this section or Section 83-19-153.

(k) Concentration risk.

(i) A ceding insurer shall take steps to manage its reinsurance recoverables proportionate to its own book of business. A domestic ceding insurer shall notify the commissioner within thirty (30) days after reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, exceeds fifty percent (50%) of the domestic ceding insurer's last-reported surplus to policyholders, or after it is determined that reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

(ii) A ceding insurer shall take steps to diversify its reinsurance program. A domestic ceding insurer shall notify the commissioner within thirty (30) days after ceding to any single assuming insurer, or group of affiliated assuming insurers, more than twenty percent (20%) of the ceding insurer's gross written premium in the prior calendar year, or after it has determined that the reinsurance ceded to any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

**HISTORY: Laws, 1991, ch. 501, § 1; Laws, 1994, ch. 333, § 1; Laws, 2017, ch. 306, § 8, eff from and after passage (approved Mar. 6, 2017); Laws, 2020, ch. 316, § 1, eff from and after July 1, 2020.**

**Joint Legislative Committee Note** — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected errors in internal references throughout the section as follows: substituted "this paragraph (d)" for "this subsection" in (d)(ii)1; substituted "this paragraph (e)" for "this subsection" in (e), (e)(v), (e)(v)1, (e)(v)2, (e)(v)3, (e)(v)4, (e)(v)5, (e)(v)6 and (e)(vii); substituted "this section" for "this subsection" in (e)(v)1, (e)(v)2, (e)(V)3, (g), (h), (i), (i)(i), (j)(i)2 and (j)(iii); substituted "or (ii) the effective date of" for "and (ii) the effective date of" in (f)(vii); and substituted "This paragraph (h)" for "This subsection" in (h)(ii). The Joint Committee ratified the correction at its October 19, 2020, meeting.

**Editor's Notes** — Laws of 2017, ch. 306, § 22, effective March 6, 2017, provides:

"SECTION 22. This act shall take effect and be in force from and after its passage, except Sections 11 through 21 of this act [codified as Sections 83-85-1 through 83-85-21] shall take effect and be in force from and after January 1, 2018. The first filing of the ORSA Summary Report shall be in 2018 pursuant to Section 16 of this act [codified as Section 83-85-11]."

**Amendment Notes —** The 2017 amendment, effective March 6, 2017, rewrote the first paragraph; in (b), substituted "In order to be eligible for accreditation, a reinsurer must" for "An accredited reinsurer is one which" at the end of the introductory paragraph, rewrote (b)(iv) and added (b)(v); in (c), designated the formerly undesignated first and last paragraphs as (i) and (ii), respectively, redesignated former (i) and (ii) as 1 and 2, and inserted "item 1 of this" in (ii); rewrote (d) through (f); and added (g) through (j).

The 2020 amendment, in (1), in the first paragraph, inserted "or (g)" and made a related change, and substituted "paragraph (h)" for "paragraph (g)"; added (f) and redesignated former (f) through (j) as (g) through (k); and in (g) and (i), inserted "or (f)" and made related change."

**RESEARCH REFERENCES**

**ALR.**

Who May Enforce Liability of Reinsurer. 87 A.L.R.6th 319.

## § 83-19-153. Reduction from liability for reinsurance ceded by domestic insurer to assuming insurer not meeting requirements.

An asset or reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Section 83-19-151 shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer, provided that the commissioner may adopt by regulation pursuant to Section 83-19-157(2) specific additional requirements relating to or setting forth: (i) the valuation of assets or reserves credits; (ii) the amount and forms of security supporting reinsurance arrangements described in Section 83-19-157(2); and/or (iii) the circumstances pursuant to which the credit will be reduced or eliminated. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations thereunder, if such security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified United States financial institution, as defined in paragraph (b) of Section 83-19-155. This security may be in the form of:

(a) Cash;

(b) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;

(c)(i) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as defined in paragraph (a) of Section 83-19-155, effective no later than December 31 in respect of the year for which filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement.

(ii) Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs; or

(d) Any other form of security acceptable to the commissioner.

**HISTORY: Laws, 1991, ch. 501, § 2; Laws, 2017, ch. 306, § 9, eff from and after passage (approved Mar. 6, 2017).**

**Editor's Notes —** Laws of 2017, ch. 306, § 22, effective March 6, 2017, provides: "SECTION 22. This act shall take effect and be in force from and after its passage, except Sections 11 through 21 of this act [codified as Sections 83-85-1 through 83-85-21] shall take effect and be in force from and after January 1, 2018. The first filing of the ORSA Summary Report shall be in 2018 pursuant to Section 16 of this act [codified as Section 83-85-11]."

**Amendment Notes —** The 2017 amendment, effective March 6, 2017, in the first paragraph, divided the former first sentence into the first and second sentences, and in the present first sentence, substituted "An asset or reduction" for "A reduction" at the beginning, and added the proviso; inserted "including those deemed . . . Valuation Office" in (b); and in (c), rewrote the former first sentence, which read: "Clean, irrevocable, unconditional letters of credit, as defined in paragraph (a), issued or confirmed by a qualified United States institution no later than December 31 in respect of the year for which filing is being made, and in the possession of the ceding company on or before the filing date of its annual statement" and designated it (i), and designated the former second sentence (ii).

## § 83-19-157. Adoption of rules and regulations.

(1) The commissioner may adopt rules and regulations implementing the provisions of Sections 83-19-151 through 83-19-157.

(2) The commissioner is further authorized to adopt rules and regulations applicable to reinsurance arrangements described in paragraph (a) of this subsection (2).

(a) A regulation adopted pursuant to this subsection (2) may apply only to reinsurance relating to:

(i) Life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits;

(ii) Universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period;

(iii) Variable annuities with guaranteed death or living benefits;

(iv) Long-term care insurance policies; or

(v) Such other life and health insurance and annuity products as to which the NAIC adopts model regulatory requirements with respect to credit for reinsurance.

(b) A regulation adopted pursuant to paragraph (a)(i) or (ii) of this subsection (2) may apply to any treaty containing (i) policies issued on or after January 1, 2015, and/or (ii) policies issued prior to January 1, 2015, if

risk pertaining to such pre-2015 policies is ceded in connection with the treaty, in whole or in part, on or after January 1, 2015.

(c) A regulation adopted pursuant to this subsection (2) may require the ceding insurer, in calculating the amounts or forms of security required to be held under regulations promulgated under this authority, to use the Valuation Manual adopted by the NAIC under Section 83-7-23(11)(b)(i), including all amendments adopted by the NAIC and in effect on the date as of which the calculation is made, to the extent applicable.

(d) A regulation adopted pursuant to this subsection (2) shall not apply to cessions to an assuming insurer that:

(i) Meets the conditions set forth in Section 83-19-151(f) in this state or, if this state has not adopted provisions substantially equivalent to Section 83-19-151(f), the assuming insurer is operating in accordance with provisions substantially equivalent to Section 83-19-151(f) in a minimum of five (5) other states;

(ii) Is certified in this state or, if this state has not adopted provisions substantially equivalent to Section 83-19-151(e), certified in a minimum of five (5) other states; or

(iii) Maintains at least Two Hundred Fifty Million Dollars ($250,000,000.00) in capital and surplus when determined in accordance with the NAIC Accounting Practices and Procedures Manual, including all amendments thereto adopted by the NAIC, excluding the impact of any permitted or prescribed practices; and is:

1. Licensed in at least twenty-six (26) states; or

2. Licensed in at least ten (10) states, and licensed or accredited in a total of at least thirty-five (35) states.

(e) The authority to adopt regulations pursuant to this subsection (2) does not limit the commissioner's general authority to adopt regulations pursuant to subsection (1) of this section.

**HISTORY: Laws, 1991, ch. 501, § 4; Laws, 2017, ch. 306, § 10, eff from and after passage (approved Mar. 6, 2017); Laws, 2020, ch. 316, § 2, eff from and after July 1, 2020.**

**Editor's Notes —** Laws of 2017, ch. 306, § 22, effective March 6, 2017, provides: "SECTION 22. This act shall take effect and be in force from and after its passage, except Sections 11 through 21 of this act [codified as Sections 83-85-1 through 83-85-21] shall take effect and be in force from and after January 1, 2018. The first filing of the ORSA Summary Report shall be in 2018 pursuant to Section 16 of this act [codified as Section 83-85-11]."

**Amendment Notes —** The 2017 amendment, effective March 6, 2017, added (2).

The 2020 amendment, in (2)(d), added (i), and redesignated former (i) and (ii) as (ii) and (iii).

# REINSURANCE INTERMEDIARY ACT

## § 83-19-201. Short title.

### RESEARCH REFERENCES

**ALR.**

Who May Enforce Liability of Reinsurer. 87 A.L.R.6th 319.